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ABSTRACT

Designed for use by American Indian tribes, archaeologists, law enforcement officials, local/state/federal administrators in charge of cultural resources management matters, and the general public, this handbook has been compiled to serve as a practical guide to protecting American Indian cultural resources in Oregon. The book brings together information on all major state and federal antiquities laws for review and comparison. Parts I and II contain descriptions of major provisions of significant state and federal cultural resources laws affecting Indian burial sites, archaeological sites and objects, classification of historic properties, scenic waterways, and conservation easements with suggestions for their practical application. Parts III and IV provide information which may facilitate cooperation and coordination between tribes, archaeologists, agencies, etc., including identification of Oregon tribes and tribal contacts. Part V details information helpful in reporting criminal violations of cultural resources protection laws. Part VI is a bibliography of resources which may be helpful in gaining further understanding of cultural resources protection laws and designing and managing protection systems. Part VII presents copies of most state and federal statutes discussed in this handbook. With the exception of the Oregon Indian Burial Law and the American Indian Religious Freedom Act, all laws are equally applicable to non-American Indian cultural resources. (Author/NEC)

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Commission on Indian Services

The Commission on Indian Services was created by statute in 1975 to advise the Legislative Assembly and other Oregon officials and agencies on the needs of American Indian people in the state. The Commission recommends ways to improve services to Indians and serves as a liaison between the state and Indians in furthering cooperative efforts. In addition, the Commission functions as a clearinghouse for information on issues of mutual interest to Indians and the state.

The eight American Indian members of the Commission on Indian Services are appointed pursuant to ORS 172.110 to two-year, staggered terms of office. These appointments are made jointly by the Speaker of the House of Representatives and the President of the Senate and are based on nominations submitted by American Indian communities in designated geographical areas of the state. The two legislative members on the Commission, a senator and a representative, are also appointed by legislative leadership.

The Commission holds meetings to learn from American Indians what problems they are facing and to discuss possible solutions. Often the Commission invites representatives of state or federal agencies to discuss their programs as they affect the Indian population in the state.

The Commission also monitors legislation affecting Indians, both while it is being considered by the Legislature and after it becomes law and assists in presenting information to the Legislature on issues of importance to American Indians in Oregon.

Among the specific statutory responsibilities of the Commission are the following: 1) to compile information on services available to American Indian people in education, employment, housing, mental health and welfare; 2) to inform American Indians of these services; 3) to recommend improvements or new programs; and 4) to report to the Legislature and the Governor.

The Commission acknowledges that it will not be able to solve all problems Indians encounter, but with the support of Indians and state government, legislative and administrative solutions can be developed to meet many of these needs.

AMERICAN INDIAN CULTURAL RESOURCES: A PRESERVATION HANDBOOK

By
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February 1985

PREFACE AND ABSTRACT

This handbook has been compiled to serve as a practical guide to protecting American Indian cultural resources in Oregon. It has been especially designed for use by American Indian tribes, however parts of it were also designed to be used by archaeologists, law enforcement officials, local-state-federal administrators in charge of cultural resources management matters, and the general public whose information about cultural resources protection laws may be limited.

Because there are many laws with many different provisions, it is sometimes difficult to ascertain which may apply to a particular situation and sometimes, more than one law may have bearing. In this handbook, information on all of the major state and federal antiquities laws are brought together for review and comparison. Many of the laws are similar, some complement each other, and others are separate and distinct in their application. These similarities and distinctions are not however, readily apparent. Therefore, in order to gain a full understanding of the laws, it is important to carefully & thoroughly review them, make comparisons, make note of distinctions, and cross-reference those laws that complement each other. Hopefully, by arranging the laws in a single resource document, the job of reviewing and understanding will be easier.

The handbook is divided into seven parts:

Part I. State Laws that Protect

Part II. Federal Laws that Protect

Part III. Working With Indian Tribes in Oregon

Part IV. The Role of Tribes in Protecting Cultural Resources

Part V. Reporting Criminal Violations

Part VI. Sources of Other Information

Part VII Statutes and Regulations

Parts I and II contain descriptions of the major provisions of significant cultural resources laws and contain suggestions for their practical application. These suggestions are based on the requirements of the laws themselves and on past procedural experience. The suggestions should not be construed to mean that they in themselves are the law.

Parts III and IV provide information which may facilitate cooperation and coordination between tribes, archaeologists, agencies, etc. Part V provides information helpful in reporting

violations of cultural resources protection laws, Part VI contains a bibliography of resources which may be helpful to gaining further understanding of cultural resources protection laws and in designing and managing protection systems, and Part VII contains copies of most of the state and federal statutes presented in this handbook.

A major point to keep in mind about the antiquities laws is that their application will be different depending on the nature of the property upon which a particular cultural resource is located on. A general rule of thumb is that federal laws apply mainly to federally owned properties and state laws apply mainly to state owned properties. The state laws also contain provisions that pertain to other publicly owned properties and to a limited extent, privately owned properties. The state law pertaining to Indian burial sites has application to any Indian burial site located on public or private lands in the state. Provisions for the protection of Indian burial sites on federal lands are included in federal laws which are similar to state law provisions.

With the exception of the Oregon Indian Burial Law and the American Indian Religious Freedom Act, all the laws are equally applicable to non-American Indian cultural resources.

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Bruce Bishop, Attorney and Interim Committee Administrator for the Oregon Legislative Assembly.

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CULTURAL RESOURCES: WHAT ARE THEY?

Cultural Resources are the fragile and non-renewable remains of past human activity. These include sites, structures, artifacts, objects, ruins, works of art, architecture, and natural features that were of importance in human events, both historic and prehistoric. Each cultural resource represents a piece of the continuum of events from the first inhabitants in the region to the people of today. The value of these resources lies in their potential for providing information about former lifeways and in their historical significance to the local or national community.*

Historic resources are generally sites, structures, artifacts, objects, ruins and works of art and architecture which have a relationship to events, persons, or conditions of the recent human past. Historic resources of significance to the American Indian past in Oregon may include:

The "treaty grove" in the Klamath Basin where the Klamath people signed their treaty in 1864,

The Siletz Tribe's Government Hill located in Siletz which is the site of the old agency buildings, boarding school, and the Paul Washington Cemetary,

The Tribal Hall of the Confederated Coos, Lower Umpqua and Siuslaw Tribes which still stands on their 6.1 acre reservation in Coos Bay,

The Mission Church at Simnasho on the Warm Springs Reservation,

The Indian Shaker Church on the Oregon shore below The Dalles Dam, or

The 1853 Cow Creek Umpqua treaty grounds at the confluence of Council and Cow Creeks near Riddle.

Prehistoric resources are those districts, sites, structures, buildings, artifacts, objects, ruins, works of art, and architecture which possess material evidence of human life and culture of the distant past and may be recovered and studied. Prehistoric resources are generally archaeological resources because in order to determine what they may indicate about the ancient past, both scientific and scholarly techniques such as controlled observation, contextual measurement, controlled collection, analysis, interpretation, and explanation are necessary. Some examples of prehistoric resources related to American Indian culture include the Ft. Rock Cave in central Oregon which dates back more than 9000 years ago, Cascadia Cave near the Santiam River (8000 years old), Netarts Sand Pit (500 years old), the Seal Rock Site (300 years old), and the Flanagan Site near Eugene, (5000-6000 years old).

In addition to historic and prehistoric resources, other cultural resources that are meaningful to American Indians include special places that are significant because of their relationship to American Indian religion, tradition, and tribal culture. Although these places may not specifically contain tangible and human-made material remains, they do have a history of usage by American Indians for specific purposes or are associated with religious practices, oral literature, and traditional mythology.

Cultural resources of this kind may include sites where American Indian people mined red ochre to make face and body paints for religious ceremonies; a site where traditional foods and herbs were usually gathered for consumption or medicinal purposes; a natural area (a mountain, waterfall, butte, etc.), that was particularly beautiful and was the site where annual ceremonies took place or was particularly favored for engaging in a spirit quest; or a special place where oral history or mythological events occured such as the place where "Coyote set the mountains and caused the waters to fall". Some of these cultural resources are still in use however those that are not are still significant because of their value to contemporary American Indians as a link to their traditional past.

*From Cultural Resources Overview of the Siuslaw National Forest, Western Oregon, Heritage Research Associates Reports No.7(1), March, 1982.

THE VALUE OF CULTURAL RESOURCES: THE GREAT DEBATE

The Scientific and Educational Perspective

The inventory, assessment, restoration, protection and interpretation of all cultural resources (both Indian and non-Indian) have humanistic, educational, and scientific value. Prehistoric and historic sites, structures and objects give present generations a "sense of place". They are the framework by which those alive today come to terms with the past and sort out that which was of value and transcendant importance.

Cultural sites and artifacts are the "windows" to the past and represent thousands of years of human activity. They have the potential to document technology, subsistance patterns, housing or shelter, and activities within a specific site area. They tell much about the diffussion of ideas, trade patterns, outside influences, and changes in culture over time. Cultural resources are also a key to understanding past ecological conditions and the impacts of environment on human populations. Seeds, pollen grains, bone and shell material are all clues to past floral and faunal distributions. The extent to which humans tapped specific food sources, over-exploited them, and then shifted to new resources, may all be documented in the careful reading of clues in a cultural site.

In order to study this unique record of the past, it is supremely important to preserve and protect cultural resources from alteration and/or destruction. Altering a site too greatly renders it unusable for study or research because its physical integrity is destroyed and the entire story of its particular location, its relation to a region, and the people who inhabited or used the resource, cannot be fully nor accurately told.

The American Indian Perspective

American Indians present an interesting paradox. While they share a common history and have similar interests and values, they are also diverse and separated by differences in language, customs, and lifestyles. Nevertheless American Indians are a unique people and as a distinct cultural group, they share a strong and common desire to remain Indian and to retain their culture and language to the fullest extent possible. Retaining this heritage is always the bottom line and the most important concern when American Indian tribes and people consider any matter whether it is educational policies, economic development programs, or activities relating to cultural resources management and protection.

Just as American Indian groups are diverse in language, customs, and lifestyles, so are their attitudes toward cultural resources. However, most will agree that cultural resources are

important and are of value because they represent a direct link to their cultural past and a direct link to the land which they have inhabited for thousands of years. The linkages provided serve to re-affirm their identity as a distinct people.

In speaking out about their heritage, many American Indians express a strong sense of ownership toward sites and artifacts relating to their culture. The remains of ancestral dwellings, the places they lived and worshiped, and all the things their ancestors used in their daily living are felt to belong to this heritage. There is also a belief among many that cultural sites and the things in them were meant to be returned to the earth and that it is not the place of those who are living to retrieve them.

Although each American Indian group is different from another, many share a personal and spiritual attachement to the land and share a spiritual belief that a supernatural power exists in all objects; animate and inanimate. Therefore it is common among American Indian groups and people to feel a deep and sacred reverence toward the land and all the animate and inanimate features of it. This naturally includes cultural sites and natural areas where many American Indians worshiped. Ceremonial and traditional rites and practices often took place and still do at a mountain, a river, a cave or a butte. The earth itself is considered the church and the earth's natural phenomena are the altars of many American Indian religions. Because of the strong sense of ownership felt toward cultural sites and because of their spiritual beliefs, many American Indians oppose archaeological excavation. Excavating cultural sites and removing the artifacts contained in them is considered to be a theft and a violation of cultural beliefs and values.

Some sites and artifacts are of special concern to many American Indians. These are burial sites and artifacts that have religious significance in American Indian ceremonial traditions.

Excavating burial sites has been a common practice in archaeology however many archaeologists no longer regard the excavation of burial sites as indispensable to tracing the development of human communities. Still, there are those who value the examination of skeletal remains because among other things, they can learn something about the relationship between diet, diseases, ecology, and social arrangements as they affect human kind in the present as well as in the past. Also, Indian burials sometimes contain artifacts that can be examined and studied.

Many American Indians oppose burial excavations because of varying cultural and religious beliefs. A commonly held belief among many American Indians is that burials are not just places where skeletal remains exist. But rather, these sites are the final resting place of their ancestors. Ancestors are highly regarded in many American Indian cultures. Even though these ancestors have passed on, they are still considered to be a part

of the living community and an on-going relationship with them continues to exist. Because ancestors are still part of the living community, many American Indians feel a responsibility to take care of them. The passage of time does not diminish this responsibility. Thus, American Indians often seek to protect burial sites from being disturbed by any means. In order to keep the community together, they will often move the remains to a common area for safekeeping.

Some artifacts are valued by many American Indians because they were used in worship and are not considered to be just interesting things to be collected or displayed in museums. They are material symbols which represent the spiritual forces that assist many American Indians to gain harmony in their lives through their use in ceremonialism. These artifacts are very much like crucifixes, prayer beads, the Bible, or chalices which are also material symbols used in Christian ceremonialism for similar spiritually sustaining purposes. Many American Indians seek to repossess sacred artifacts because of their spiritual significance and because many feel that they cannot be allowed to fall into disuse; otherwise the vitality of their meaning may become lost.

The Debate

Up until recently, scientists have studied the remnants of past American Indian cultures in a detached manner. While they recovered, probed, analysed and interpreted cultural remains, very little consideration was given to the connection of this "data base" with the contemporary American Indians whose culture they were studying. To many American Indians, this seemed as if they, and the remains of their former lifeways were being exploited and there was much resentment toward being treated like "bugs under a microscope".

Besides feeling like simple objects of research, many American Indians also felt that the research was insulting to their dignity and that it violated many of their cultural values and beliefs. As more and more American Indians began objecting to what they felt was irreverent and insensitive scientific probing of their culture, scientists reacted by insisting that the right to know and understand the past was a higher priority and that the benefit to all human kind to learn about the past was more important.

Accommodating Conflicting Values

Even though some members of both groups have still maintained these polarized positions, others have let down their guard to consider the other's point of view.

In recent years, anthropologists and archaeologists have become increasingly concerned with the ethical implications of their research activities. Many have come to realize that their research projects may have an adverse effect on the lives of the

people they touch. They now realize that excavations are sincerely felt by many American Indians to be an affront to their actual and physical ancestors and are a violation of their human values. As a result, the scientific community has begun to weigh carefully the scientific value of their work against the human impact it may have and to develop as individuals and as a profession, an appropriate set of priorities and ethical standards.

While many American Indians still oppose archaeological excavation, there are others who see real value in the information that can be gained from excavations. Some tribes and American Indian people feel that their culture can be enriched and further validated by archaeological work because the knowledge that is gained can help to reconstruct the parts of their culture which may have been lost. Some tribes have even benefited from archaeological studies because they have served to document and support tribal claims to lands and to usufructuary rights. Though they recognize that knowledge is important, they continue to draw the line with regard to burial sites and depending on the group, they may permit examination of the burial remains prior to immediate reinterment in an appropriate place.

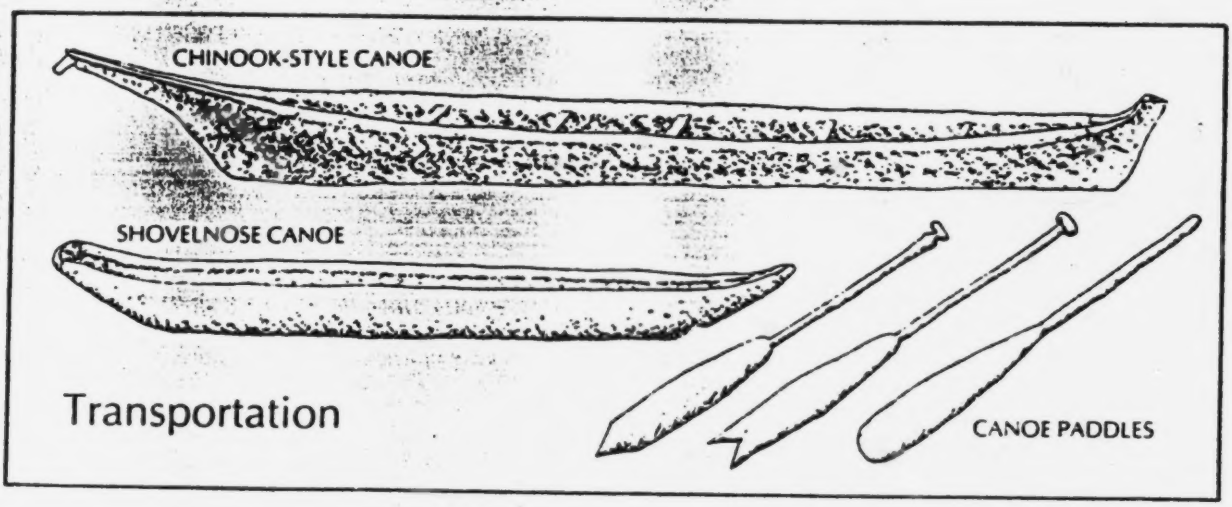
Through the mutual acceptance of each other's values, members of both groups have jointly sought to frame and reframe cultural resources protection laws so that they are designed in ways that do not compromise the integrity of American Indian cultural values or the basic goals of research and education. Both groups have also worked to design the laws so that they continue to protect the resources from their common enemies; looting, damage, destruction, vandalism, etc. Many cultural resources protection laws, particularly those that have been enacted in recent years, reflect this delicate balance which was achieved through major concessions from both interests. The basic compromise allows research to continue; but not without restrictions and requirements designed to incorporate respect and regard for American Indian interests and values.

PART I:

STATE

LAWS THAT

PROTECT



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REMOVAL OF HISTORICAL AND OTHER VALUABLE MATERIALS (ORS 273.705 - ORS 273.711)

In this discussion of ORS 273.705-711, "public lands" means any lands that are owned by the state, or owned by a city, county, district, or municipal or public corporation in the State of Oregon. **THE PROVISIONS OF THIS LAW APPLY ONLY TO PUBLIC LANDS. THEY DO NOT APPLY TO LANDS IN PRIVATE OWNERSHIP.**

Under this Oregon law, a person cannot excavate, alter, make exploratory excavations, or remove from public lands any material of archaeological, historical, prehistorical, or anthropological nature without first getting a permit issued by the Division of State Lands. Before issuing the permit, the Division of State Lands first assures the approval of the governmental agency charged with managing the publicly owned land on which the excavation is to be made, and also consults with the State Historic Preservation Office. If a site is associated with prehistoric or historic American Indian culture, The Division of State Lands must also consult with the Oregon Legislative Commission on Indian Services and the most appropriate Indian tribe.

The Division of State Lands can only issue a permit to:

> A person conducting an excavation, examination or gathering of such material for the benefit of a recognized scientific or educational institution with a view to promoting the knowledge of archaeology or anthropology, or
>
> A qualified archaeologist to salvage such materials from unavoidable destruction, or
>
> A qualified archaeologist sponsored by a recognized institution of higher learning, private firm, an Indian tribe as defined in ORS 97.740, or any other Indian tribes whose traditional culture areas include Oregon lands.

Under special circumstances, this law also allows scientific or educational institutions, private firms, or Indian tribes to gather and keep archaeological materials collected on public lands and to curate them in their own state approved curatorial facilities. Ownership of the material remains with the state in public trust for the citizens of Oregon.

APPLICATION TO INDIAN BURIAL SITES

Although an archaeological site may also include an Indian cairn or grave, a legal differentiation is made between the two in the application of this law. This law pertains to all archaeological sites that are not Indian cairns or graves, (that is, do not

contain human Indian remains). If in the course of excavation, an archaeological site is discovered to contain human remains, and if they are determined to be the remains of an Indian burial, then the provisions of the Oregon Indian Burial Law must complied with.

TRIBAL COMMENTS ON EXCAVATION PERMITS

Although the ultimate authority to grant or deny an excavation permit lies with the Division of State Lands, tribes do have the right to express their views on the issuance of the permit and such views must be considered in the final decision. Tribes can provide whatever comment they feel appropriate to the situation. If a tribe feels that a permit should not be granted, then that comment should be submitted along with the reasons why. If a tribe feels that the permit should be granted but with conditions attached or feels the permit should not be granted at all, then those recommendations should be made.

Whatever the tribe's recommendations are, they should always be given within the period of time designated. When the tribe does not provide comment, their concerns or interests remain unknown and therefore cannot be considered. Also, if tribes do not comment, it is often assumed that tribes have none to provide.

In the instance when a tribe has a problem with a particular permit application, it is best to inform the Division of State Lands as soon as possible before the expiration of the comment period. By doing this, the tribe will have met their responsibility to provide comment within the given period of time and may be able to extend the comment period so that further information can be obtained if necessary so that the problem can be resolved before the final decision on issuing the permit is made. When tribes do have concerns about an applicant's proposed excavation, they should never hesitate to contact or meet with the applicant to discuss their concerns. Almost always, the tribe and the applicant can reach an understanding of each other's goals and/or concerns.

If a permit is granted even though a tribe has recommended that it not be or if reasonable tribally recommended conditions are not attached to the permit, a tribe can request a reconsideration in which case an understanding or a change in the decision can be accomplished, (Author's recommendation: a reconsideration is a reasonable request even though it may not be part of the Division of State Land's procedures). If after reconsideration, the tribe still feels strongly that their concerns have not been appropriately considered, a tribe can seek legal action to secure an injunction, restraining order, or other prohibitive order to prevent the excavation from taking place until the issues have been resolved in court, (Authority: ORS 358.925, Section 8).

Such action will allow further time in court for the tribe to plead its case however it does not guarantee the results.

ADDITIONAL REQUIREMENTS

Not included in this statute are requirements which must be met when an archaeological excavation is conducted on public lands in Oregon. These requirements primarily refer to notification and consultation with Indian tribes when an archaeological site relates to historic or prehistoric American Indians. PLEASE REVIEW ORS 358.905 - ORS 358.955, (Archaeological Sites and Objects).

PENALTIES

Violation of this law is a Class B Misdemeanor as listed in ORS 273.990. Conviction of a Class B Misdemeanor is punishable by 6 months in jail, a $1000 fine, or both. A violator can also be subject to civil court actions. See statute for specifics.

FOR MORE INFORMATION CONTACT:

HISTORIC PRESERVATION OFFICE
Department of Transportation, Parks and Recreation Division
525 Trade Street SE
Salem, Oregon 97310
503/378-5002

OREGON LEGISLATIVE COMMISSION ON INDIAN SERVICES
454 State Capitol, Salem, Oregon 97310
503/378-5481

DIVISION OF STATE LANDS
1445 State Street, Salem, Oregon 97310
503/378-3805

OREGON STATE MUSEUM OF ANTHROPOLOGY
College of Arts and Sciences
University of Oregon, Eugene, Oregon 97403-1218
503/686-3034

FOR INFORMATION ON THE MOST APPROPRIATE INDIAN TRIBE
See handbook section "Working With Indian Tribes"

ARCHAEOLOGICAL SITES AND OBJECTS
(ORS 358.905 - ORS 358.955)

For the purposes of this discussion on ORS 358.905-955, public lands means any lands owned by the state, a city, a county, a district or a municipal or public corporation in Oregon. Although most of the provisions of this law pertain to public lands, **THERE ARE SOME PROVISIONS THAT DO APPLY TO SITES LOCATED ON PRIVATELY HELD PROPERTIES.**

This law was enacted in 1983. It declares that the archaeological resources on all public lands in Oregon shall be protected against neglect, destruction, or misappropriation. It applies to all archaeological sites that are not Indian burial sites. Provisions for protecting Indian burial sites are covered separately in ORS 97.740.

This law prohibits excavating, injuring, destroying, or altering sites on public lands or systematically removing artifacts from public lands in Oregon unless such activity is expressly authorized under the permit procedure as outlined in ORS 273.705 (Removal of Historical and Other Valuable Materials).

The law further prohibits the sale and purchasing of artifacts taken from public lands. An artifact obtained from a site on public lands may only be bought or sold if it was acquired prior to the effective date of this law, October 15, 1983. The sale or purchase must be accompanied by a certificate of origin.

If the artifact being bought or sold was acquired prior to October 15, 1983, a certificate of origin is a written statement that discloses where the artifact was obtained and that it was obtained prior to the effective date of the law.

If the artifact being bought or sold was acquired after October 15, 1983, a certificate of origin consists of a written statement that discloses where the artifact was obtained and that it was obtained lawfully. An artifact is obtained lawfully when the artifact is:

NOT taken from an Indian burial site, and

NOT taken from a site on public lands, and

NOT taken from a site on private property without the written permission of the private property owner.

OTHER GENERAL PROVISIONS

All archaeological objects in the possession of a person found to be in violation of the law can be seized by any police officer.

All property, real or personal including money which is used in violating this law can be subject to civil forfeiture.

If a sacred object, (see statute for definition) is found in an archaeological site on public or private lands, written notification of the find must be provided to the State Historic Preservation Office and the appropriate ethnic or religious group, or Indian tribe that the sacred object is associated with. If the sacred object is recovered on public land, the State Historic Preservation Office must authorize the appropriate group to reposess it.

Any person who conducts an archaeological excavation associated with a prehistoric or historic Indian tribe must notify the appropriate tribe, (including tribes in other states whose culture areas included Oregon lands).

The notification to an appropriate Indian tribe must include at least the location and schedule of the forthcoming excavation, a description of the nature of the investigation, and the expected results of th excavation.

After notification to the appropriate Indian tribe, the person conducting the excavation must consult with a representative of the tribe to establish a procedure for handling sacred objects that might be uncovered during the excavation.

A delegate from the appropriate Indian tribe may be present at the excavation.

Concluding an archaeological investigation, a report on the excavation findings must be provided to the appropriate Indian tribe and to the Commission on Indian Services.

Persons violating the law are subject to criminal penalties and to civil action which can be initiated by any person in the state of Oregon.

APPLICATION ON PRIVATE PROPERTY

The application of this law to archaeological activities on PRIVATE PROPERTIES includes the following:

1. A person may not excavate an archaeological site on private property without first obtaining the written permission of the property owner to do so.

2. A person may not sell or purchase, or offer to sell or purchase artifacts that were removed from private property without first obtaining written permission from the property owner to remove the artifact from the property. This is in addition to obtaining written permission to excavate a site on private property. In other words, a person does not need written permission to buy or sell an artifact taken from a site on private property, however a person does need written permission to dig up an artifact from a site and written permission to remove it from the property.

3. A person intending to conduct an archaeological excavation on private property must consult and make arrangements with an appropriate Indian tribe prior to the excavation on the handling of sacred objects if they are uncovered.

4. If a person is conducting an archaeological excavation on private property (after getting the property owner's written permission), and finds a sacred object, that person must notify the State Historic Preservation Office and the appropriate Indian tribe. Even though notification to the SHPO and the appropriate tribe is required, the law DOES NOT require that the sacred object be returned to the appropriate tribe. Returning a sacred object to an appropriate tribe is required only if it is found on public lands. The moral decision of whether or not a sacred object found on private property should be returned to an appropriate tribe is left to the discretion of the finder and the property owner. Legally, the item would belong to the property owner.

5. If a person conducts an archaeological excavation associated with a historic or prehistoric Indian tribe on private property, that person must notify the most appropriate Indian tribe and follow the specific provisions of this law that pertain to relations with Indian tribes. Since the law states that "any person" must do this, then all persons must do this regardless of where the activity is taking place.

PUBLIC RECORDS RELATING TO ARCHAEOLOGICAL SITES & OBJECTS EXEMPT FROM DISCLOSURE

Within this law there are frequent references to ORS 192.005 and ORS 192.500. First, ORS 192.005 defines records or information concerning archaeological sites or objects as "Public Records". ORS 192.500 then exempts this public record information from public disclosure. Thus, information relating to the location of archaeological sites and objects cannot be released to the public unless the public interest requires the disclosure or if the governing body of an Indian tribe requests the information. The information may be disclosed to the tribe if the information is needed in relation to cultural or religious activities. This exemption does not include information relating to a site that is all or in part existing, commonly known, and publicized as a tourist facility or attraction.

AN IMPORTANT EXCEPTION TO THE LAW

The provisions of this law do not apply to a person who unintentionally discovers an archaeological object on public or private lands and retains the object for personal use. This means that if a person out on a hiking expedition finds an artifact on the ground's surface and keeps it, he or she is not violating the law. If this person, after finding the artifact continues to search for more artifacts on the ground's surface or digs up the ground to find more artifacts, then this person's actions become intentional and the activity could be considered a violation. If the same person was on a hiking expedition for the express purpose of looking for artifacts and this person finds & keeps the artifacts, then his or her actions are intentional and he or she would therefore be violating the law.

PENALTIES

Violation of this law, ORS 358.920 is a Class B misdemeanor. This penalty is listed under ORS 273.990. Conviction of a Class B Misdemeanor is punishable by 6 months in jail, a $1000 fine, or both.

FOR MORE INFORMATION CONTACT:

HISTORIC PRESERVATION OFFICE
Department of Transportation, Parks and Recreation Division
525 Trade St. SE, Salem, Oregon 97310
503/378-5002

OREGON LEGISLATIVE COMMISSION ON INDIAN SERVICES
454 State Capitol, Salem, Oregon 97310
503/378-5481

DIVISION OF STATE LANDS
1445 State Street, Salem, Oregon 97310
503/378-3805

FOR MORE INFORMATION ON THE MOST APPROPRIATE INDIAN TRIBE
See handbook section "Working with Indian Tribes"

PROTECTION OF INDIAN GRAVES
(ORS 97.740 - ORS 97.760)

This law specifically protects native Indian cairns and graves* from willfull removal, mutilation, defacement, injury, or destruction.

Because this law pertains to any cairn or grave of any native Indian, it applies to all Indian cairns and graves wherever they are located in Oregon including privately held lands or lands owned by local, state, or federal governments. The law applies to sites on federal lands because it is the willful act of removing, mutilating, defacing, injuring, or destroying Indian cairns and graves that is prohibited by law no matter where such activity is taking place.

Inadvertent disruption of an Indian grave site is not a prohibited act under this law however persons disturbing Indian cairns or graves through inadvertence must contact an appropriate Indian tribe and reinter the contents of the cairn or grave at their own expense under the supervision of the appropriate Indian tribe.

In regard to excavations by professional archaeologists, this activity is allowed under the law however an archaeologist must make prior written notification to the State Historic Preservation office and must have the prior written consent of the appropriate Indian tribe in the vicinity of the intended action. Consent is deemed if the tribe does not respond otherwise within 30 days. All objects and remains removed during such an excavation must, following scientific study, be reinterred at the archaeologist's expense under the supervision of the tribe.

This law contains further prohibitions against possessing or selling artifacts and human Indian remains taken from an Indian burial or cairn and prohibits publicly displaying and exhibiting them any where in the state.

PENALTIES

A person found guilty of violating this law is subject to both civil and criminal prosecution. The crime is considered a Class A Misdemeanor punishable by one year imprisonment and/or a $25,000 fine. In addition to this penalty, any native Indian artifacts or human remains taken by, or in the possession of any person sentenced for violating this law, and all equipment used in violating the law, may be ordered forfeited by the court and disposed of in any manner the court feels appropriate.

Special attention should be paid to the section of this law which allows an indigenous Oregon Indian tribe or an enrolled member thereof, to bring civil action in court to secure an injunction, damages, or other appropriate relief if a person does not follow the specific provisions of the law. This particular aspect of the law was incorporated to ensure that the concerns and interests of Indian tribes are considered and to provide them with recourse options that allow them to assert their interest and concern for burial sites and cairns.

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* The definition of an Indian cairn or grave is not specifically contained in the statute. According to various sources the definitions of a cairn or grave are as follows:

"Cairn", according to Webster's 7th Collegiate Dictionary is a "a heap of stones piled up as a memorial or as a landmark".

"Grave", according to the same source is defined as "an excavation for burial of a body".

"Grave", according to ORS 97.010 means "a space of ground in a burial park, or intended to be used, for burial of the remains of one person".

"Grave" according to Black's Law Dictionary means "An excavation in the earth in which a dead body is, or is to be buried, or a place for interment of a corpse, such as a tomb, or a sepulcher."

FOR MORE INFORMATION CONTACT:

HISTORIC PRESERVATION OFFICE
Department of Transportation
Parks and Recreation Division
525 Trade Street SE
Salem, Oregon 97310
503/378-5002

LEGISLATIVE COMMISSION ON INDIAN SERVICES
454 State Capitol
Salem, Oregon 97310
503/378-5481

STATE LAND USE PLANNING LAW
(ORS 197.005- ORS 197.850)

The Oregon Land Use Program administered by the Land Conservation and Development Commission and Department was created to coordinate comprehensive planning throughout the state to provide for orderly growth and development while promoting wise management and use of the state's resources. The legislation creating the land use program provided that the Land Conservation and Development Commission (LCDC) develop with broad citizen involvement, standards (goals) for comprehensive planning. Comprehensive plans are developed and implemented by cities and counties. Counties share coordination responsibilities with the LCDC. LCDC is further charged with the responsibility of coordinating state and federal agencies to ensure that their planning is implemented through city and county comprehensive plans. Agency plans are subordinate to local comprehensive plans.

The 278 jurisdictions (242 cities & 36 counties) of the state are required to comply with Statewide Planning goals and must submit comprehensive plans and implement ordinances for approval by the LCDC. If the plans submitted are compatible with the Commission's statutorily defined goals, they receive a formal Acknowledgement of Compliance from LCDC. The plans which have not satisfied one or more of the Statewide Planning Goals, must be re-submitted for another review.

The LCDC serves as a statewide forum for all changes to approved comprehensive plans. It participates in city/county amendment actions when necessary to assure that statewide goal requirements are being met. The 1981 Legislature directed an ongoing review of all land use plans to assure that plans continue to reflect statewide land use policy. This periodic review must occur at least every two years starting January 1983. Once it has acknowledged the plans of cities and counties, the LCDC assists local governments with implementing their plans. The Department of Land Conservation and Development is the administrative arm of LCDC.

HISTORIC PRESERVATION REQUIREMENTS OF THE STATE WIDE PLANNING GOALS

Four of Oregon's 19 statewide planning goals specifically address historic preservation: GOAL 5 relates to open spaces, scenic and historic areas, and natural resources; GOAL 8 relates to recreation needs, GOAL 15 relates to the Willamette River Greenway, and GOAL 17 relates to Coastal shorelands.

GOAL 5 sets forth the primary cultural resources protection requirements which must be met by local governments in the planning process. It requires all counties and incorporated cities to inventory the location, quality and quantity of their historic resources, including archaeological sites. Because of the obvious danger incurred in identifying the locations of archaeological sites, LCDC has not required that specific locations be provided in plans. However, such information must be made available to decision makers as needed.

Conflicting uses with identified historic and archaeological resource sites must be identified. Major remodeling and demolition activities are viewed as the primary conflicts with historic sites. Conflicting uses must then be analyzed in terms of economic, social, environmental and energy (ESEE) consequences.

Based on the analysis of ESEE consequences, local governments must decide whether to protect sites fully, allow conflicting uses fully (not withstanding the impact on the resource sites), or limit conflicting uses to provide a desired degree of resource protection. Implementing measures such as historic preservation ordinances must be adopted to carry out such decisions.

American Indians, tribes, and others can involve themselves in the local ongoing, planning processes of cities and counties in order to make local government aware of sites of importance and to press for inclusion of such sites in the local plan's historic resources inventory, (the inventory can be held confidential). Most cities and counties have either planning committees and/or planning officers charged with administering local plans and complying with statewide planning goals. To find out more information about local level land use plans or to get a site included in the historic resources inventory; local elected officials, local planning officials, and/or the Land Conservation and Development Department should be contacted. To find out who local level officials are, contact city hall or the county commission's office. To contact officials of the Land Conservation and Development Department, consult the main office or the various field offices.

FOR MORE INFORMATION CONTACT

MAIN OFFICE, Land Conservation and Development
1175 Court St. NE, Salem, Oregon, 97310
503/378-4926

LA GRANDE FIELD OFFICE,
Regional Services, Eastern Oregon State College,
LaGrande, Oregon, 97850
503/963-1742

MEDFORD FIELD OFFICE
201 W. Main, Suite 2E, Medford, Oregon 97501
503/776-6084

NEWPORT FIELD OFFICE
313 SW 2nd St., Suite B, Newport, OR 97365
503/265-8869

PORTLAND FIELD OFFICE
320 SW Stark, Rm 530, Portland, Oregon, 97204
503/229-6068

BEND FIELD OFFICE
2150 Studio Rd., Bend, Oregon 97701
503/388-6424

STATE HISTORIC PRESERVATION PLAN
(ORS 358-605 - ORS 358.622)

In 1983 the Oregon Legislative Assembly made an official declaration of the importance of Oregon's cultural heritage and made it a policy of the state to identify, foster, encourage and develop the preservation, management, and enhancement of structures, sites and objects of cultural significance within the state.

The State Historic Preservation Office, (SHPO), is the administrative agency designated to carry out the established policy. Some of the responsibilities of the agency are:

1. To conduct a comprehensive, statewide survey to identify districts, sites, buildings, structures, and objects that are potentially significant in Oregon history, prehistory, architecture, archaeology, and culture, and

2. To prepare and implement a comprehensive statewide historic preservation plan to assist local governments in developing their preservation programs and participate in national programs, and

3. To maintain a statewide inventory of historic properties, and

4. To work with local, statewide and national organizations to develop means of promoting historic preservation, including legislation, financing, education, easements, conferences, workshops, and audio-visual materials, and

5. To provide comment and review on the impact of publicly funded projects and programs.

WORKING WITH THE STATE HISTORIC PRESERVATION OFFICE TO PROTECT CULTURAL SITES

Individuals, tribes, and organizations can contact the SHPO for:

1. Information on nominating cultural sites including archaeological sites for inclusion on the newly created Oregon State Register of Historic Properties and the National Register of Historic Places. If so designated, the property may be eligible for a special reduced tax assessment, (See ORS 358.475, Classification of Historic Properties), or

2. Information on grant programs available to conduct surveys of historic properties, or

3. Assistance in developing means of promoting historic preservation, or

4. To inform the SHPO of important American Indian cultural sites and to press for inclusion of these resources in the statewide survey and inventory, and the historic preservation plan.

Where projects involve American Indians, the SHPO is required to work with American Indian groups in Oregon. Most projects where American Indian consultation is solicited is in the development of SHPO plans and policies.

Other opportunities available for American Indian input include participation in the deliberations of the State Committee on Historic Preservation. As required by this law, an American Indian member must be appointed. Through this direct participation, American Indian concerns in historic preservation policy can be represented.

FOR MORE INFORMATION CONTACT:

STATE HISTORIC PRESERVATION OFFICE
Department of Transportation, Parks and Recreation Division
525 Trade Street SE, Salem, Oregon 97310
503/378-5002

CLASSIFICATION OF HISTORIC PROPERTIES
(ORS 358.475 - ORS 358.565)

Under Oregon law, owners of Oregon properties entered into the National Register of Historic Places, including those properties which have been designated as contributing features of historic districts may apply for a special tax assessment status. This special assessment represents a "freeze" of the true cash value of the property for a 15 year period. In return for this benefit, which is actually a deferral of increases in assessments, the property owner agrees to maintain the property in such a way that it does not deteriorate and agrees to submit all plans and specifications for alterations, rehabilitation, or restoration for review and approval by the State Historic Preservation Office.

Congress established the National Register of Historic Places to give recognition to "districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, and culture". Listing a site on the National Register can bring important federal protections and can also create a greater awareness of the importance of Indian culture in Oregon. It is a way to educate the non-Indian community and public officials to the value of Indian ways. In addition, National Register properties may qualify for federal grants on a matching basis for preservation purposes.

If a tribe or tribal group wishes to apply for the inclusion of a cultural site on the National Register but are concerned about the hazard of publicizing a site by placing it on the Register, the SHPO should be informed about the necessity of keeping the exact location a secret. The SHPO is committed to protecting sites from desecration and will cooperate with the request, as will the National Register Office.

FOR MORE INFORMATION CONTACT:

STATE HISTORIC PRESERVATION OFFICE
Department of Transportation, Division of Parks and Recreation
525 Trade Street SE, Salem, Oregon 97310
503/378-5002

SCENIC WATERWAYS
(ORS 390.805 - ORS 390.925)

This law establishes a state policy that many of the free-flowing rivers and lakes in Oregon and lands adjacent to such rivers and lakes possess outstanding scenic, fish, wildlife, geological, botanical, historic, archaeologic, and outdoor recreation values of present and future benefit to the public.

In order to protect such areas adjacent to rivers and lakes from destruction due to the building of dams, construction, mining, etc., the state created an Oregon scenic waterways system. Several segments of lakes and rivers are designated as scenic waterways under the law however, others may be designated as a scenic waterway for protection through a special review and approval process. A special provision relating to waterways on Indian reservation lands is contained in the law.

If a historic or archaeologic site located along the shores of a designated scenic waterway is being disturbed or destroyed or if there is a water way that contains an important cultural site and might qualify for a scenic waterway designation, the Scenic Waterways Program should be contacted.

FOR MORE INFORMATION CONTACT:

THE SCENIC WATERWAYS PROGRAM
Department of Transportation
Parks and Recreation Division
525 Trade St. SE
Salem, Oregon 97310
503/378-6305

COLUMBIA RIVER GORGE
(ORS 390.410 - ORS 390.460)

Under this law, it is a policy of the state to "maintain the scenic splendor of the Columbia River Gorge...", and to "preserve and restore historical and archaeological sites, structures, facilities and objects adjacent to the Columbia River...".

To further this public policy, the Columbia River Gorge Commission was established. Lands containing historic or archaeologic sites may come under the protection of the law if land is acquired by the state through purchase, exchange, transfer, gift or devise, or through contractual arrangement.

Also, the need for protecting archaeological sites can be brought to the attention of the Columbia River Gorge Commission which serves as an advisory body to interested local state and federal agencies acting within the scope of their comprehensive land use planning and other responsibilities.

FOR MORE INFORMATION CONTACT:

COLUMBIA RIVER GORGE COMMISSION
P.O. Box 284, Stevenson, Washington, 98648
509/427-8866

CONSERVATION EASEMENTS
(ORS 271.715 - ORS 271.795)

Oregon law (ORS 271.715-271.795) permits public agencies to help in protecting lands with special natural or cultural features, and it provides tax incentives to landowners who agree to restrict their use of such lands.

Called "conservation easements", these arrangements can be used for lands with scenic or open space values, with special natural resources, or with historical, architectural, archaeological, or cultural resources. Conservation easements can only be created voluntarily by agreement between the landowner and the public agency. But once they have been established, they are legally binding, and even subsequent purchasers of the land can be affected by them. In addition to any other benefits that the landowner may receive, conservation easements also allow the land's taxable value to be reduced for property tax purposes.

The potential for protecting cultural resources under this law is great. Conservation easements may be particularly useful in protecting non-public and non-reservation cultural sites that are important to a tribe but are on private land outside of tribal control. The specifics of the law should be reviewed to determine how it could be used in particular situations. But by working with the property owner and an appropriate governmental body, valuable cultural and natural resources can be protected and preserved.

PART II:
FEDERAL LAWS THAT PROTECT

FEDERAL LAWS THAT PROTECT

Federal antiquities protection laws and their corresponding rules and regulations are as extensive as they are numerous. Therefore only a selected few of them are briefly described in this section of the handbook.

Almost without exception, copies of the federal laws are included in PART VII, STATUTES AND REGULATIONS, as they appear in the 1982 edition of the United States Code which is a consolidation and codification of all the general and permanent laws of the United States in force on January 14, 1983. When the statutes were extremely lengthy, only relevant parts were included.

In addition to the statutes, some of the codified federal regulations corresponding to the statutes have also been included as they appear in the 1984 Code of Federal Regulations, (the acronym is CFR meaning the Code itself or the regulations contained in it). The majority of the CFR's were not included in Part VII because they are numerous and lengthy. Only a few were selected. Note that the 1984 or any other current CFR may not contain new regulations or recent changes in regulations. For information on recent changes or new regulations, consult the monthly Federal Register Index. To access CFR's not contained or referenced in this handbook, consult the most recent CFR Index and Finding Aids or, consult the most recent edition of the United States Code Service, (USCS) or the United States Code Annotated (USCA). The USCS and the USCA, published by private publishing companies restate the United States Code and contain helpful annotations such as historical notes, cross references, relevant judicial decisions and most importantly for the users of this handbook references for corresponding federal regulations. Most of this information can be accessed through libraries especially those that are depositories for federal documents. The best resource would be a law library such as the Supreme Court Library in Salem or the libraries of university law schools.

For information about agency regulations pertaining to the protection of cultural resources that are not codified in the CFR, appropriate federal agency personnel should be contacted.

FEDERAL POLICIES RELATING TO AMERICAN INDIANS

Typically, most of the early federal laws do not specifically relate to American Indian concerns about cultural resources however that does not necessarily mean that there are none. Some more recent laws such as the Archaeological Resources Protection Act of 1979, create new provisions that speak to American Indian concerns and have retroactive effect. For

example, because of the ARPA, the cultural resources management procedures of federal agencies within the Departments of Interior, Agriculture, & Defense must be in accordance with the provisions of the ARPA. This includes such agencies as the U.S. Conservation Service, U.S. Forest Service, U.S. Fish & Wildlife Service, U.S. Geological Survey, Bureau of Indian Affairs, Army Corp of Engineers, Bureau of Land Management, Bureau of Reclamation, or the Bureau of Mines.

Also, because of the American Indian Religious Freedom Act of 1978, all federal agencies have had to evaluate their enabling statutes, policies, and practices to determine any changes that are necessary to comply with the Act. Many of the agencies have made those revisions if cultural resources management practices were in conflict with the American Indian Religious Freedom Act. Other laws such as the two mentioned here, may have the same retroactive affect though American Indian interests are not always specifically addressed. There are often other provisions that provide for general public input into the decision making process which are equally applicable to American Indians.

CITIZEN PARTICIPATION

If an individual, organization or tribe is interested in informing federal agencies of their concerns about cultural resources or concerns about particular sites or is interested in taking part in planning and review processes that relate to the protection of cultural resources, it is best to begin the inquiry into how that might be accomplished by contacting the district office of the federal agency having jurisdiction.

GETTING MORE INFORMATION

Though some federal statutory & regulatory information may be missing from this handbook, tribes and tribal individuals can always gain assistance by contacting the State Historic Preservation Office or federal agency regional or district offices. The most helpful federal agency personnel contacts are the agency's archaeologists or cultural resources technicians. The following is a partial list of federal contacts. If a particular contact is not listed, consult the phone book for "U.S. Government" listings.

FEDERAL ARCHAEOLOGISTS:

BUREAU OF LAND MANAGEMENT:

AREA ARCHAEOLOGIST
Oregon State Office
P.O.Box 2965
Portland, OR 97208
503/231-6953

DISTRICT ARCHAEOLOGIST
Salem District Office
P.O. Box 3227
Salem, OR 97302
503/399-5613

DISTRICT ARCHAEOLOGIST
Prineville District Office
P.O. Box 550
Prineville, OR 97754
503/447-4115

DISTRICT ARCHAEOLOGIST
Coos Bay District Office
333 S. 4th Street
Coos Bay, OR 97420
503/269-5880

DISTRICT ARCHAEOLOGIST
Lakeview District Office
P.O. Box 151
Lakeview, OR 97630
503/947-2177

DISTRICT ARCHAEOLOGIST
Vale District Office
P.O. Box 700
Vale, Oregon 97918
503/473-3144

DISTRICT ARCHAEOLOGIST
Roseburg District Office
777 NW Garden Valley Blvd.
Roseburg, OR 97470
503/672-4491

(none)
Burns District Office
74 South Alvord St.
Burns, OR 97220
503/573-5241

DISTRICT ARCHAEOLOGIST
Eugene District Office
P.O. Box 10226
Eugene, OR 97440
503/687-6846

DISTRICT ARCHAEOLOGIST
Medford District Office
3040 Biddle Rd.
Medford, OR 97504
503/776-3788

U.S. FOREST SERVICE:

AREA ARCHAEOLOGIST
U.S. Forest Service
P.O. Box 3623
Portland, OR 97208
503/221-3644

ARCHAEOLOGIST
Deschutes National Forest
1645 Hwy 20 East
Bend, OR 97701
503/388-8577

ARCHAEOLOGIST
Rogue River National Forest
P.O. Box 520
Medford, OR 97501
503/776-3639

ARCHAEOLOGIST
Siskiyou National Forest
P.O. Box 440
Grants Pass, OR 97526
503/479-5301

ARCHAEOLOGIST
Fremont National Forest
P.O. Box 551
Lakeview, OR 97630
503/947-6260

ARCHAEOLOGIST
Mt. Hood National Forest
2955 NW Division St.
Gresham, OR 97030
503/666-0795

ARCHAEOLOGIST
Malheur National Forest
139 NE Dayton St.
John Day, OR 97845
503/575-1731

ARCHAEOLOGIST
Ochoco National Forest
P.O. Box 490
Prineville, OR 97754
503/447-6247

ARCHAEOLOGIST
Umatilla National Forest
2517 SW Hailey Ave.
Pendleton, OR 97801
503/276-3811

ARCHAEOLOGIST
Siuslaw National Forest
4077 Research Way
Corvallis, OR 97333
503/757-4568

ARCHAEOLOGIST
Umpqua National Forest
P.O. Box 1008
Roseburg, OR 97470
503/672-6601

ARCHAEOLOGIST
Willamette National Forest
P.O. Box 10607
Eugene, OR 97440
503/687-6900

ARCHAEOLOGIST
Wallowa-Whitman National Forest
P.O. Box 907
Baker, OR 97814
503/523-6391

ARCHAEOLOGIST
Winema National Forest
P.O. Box 1390
Klamath Falls, OR 97601
503/883-6801

ARCHAEOLOGIST
Klamath National Forest
1312 Fairlane Rd.
Yreka, CA 96097
916/842-6131

<u>OTHER</u>:

AREA ARCHAEOLOGIST
U.S. Army Corp of Engineers
Cultural Resources Unit
P.O. Box 2946
Portland, OR 97208
503/221-4974

AREA ARCHAEOLOGIST
U.S. Fish and Wildlife Service
Lloyd 500 Building Suite 1552
500 NE Multnomah St.
Portland, OR 97232
503/231-6173

AREA ARCHAEOLOGIST
Bureau of Indian Affairs
1425 NE Irving
P.O. Box 3785
Portland, OR 97208
503/231-6904

AREA ARCHAEOLOGIST
U.S. Soil Conservation Service
State Office
1220 SW 3rd, 16th Floor
Portland, OR 97204
503/221-2991

OTHER FEDERAL CONTACTS

ENVIRONMENTAL PROTECTION AGENCY
Oregon Operations Office
522 SW Fifth
Portland, OR 97204
503/221-3250

NATIONAL PARK SERVICE
Pacific Northwest Region
2001 6th Ave.
Seattle, WA 98121
206/442-4830

FEDERAL HIGHWAY ADMINISTRATION
Department of Transportation
Regional Office
708 SW Third
Portland, OR 97204
503/221-2053

THE ANTIQUITIES ACT OF 1906
(16 U.S.C. 431, P.L. 59-209, 34 STAT. 225)

The Antiquities Act gave the President discretionary authority to declare landmarks, historic and prehistoric structures and other objects located on federal lands as national monuments to be protected by the federal government. Originally only lands owned by the federal government could be set aside in this manner, however the law was later amended to extend protection under certain circumstances to lands held in private ownership.

In order for excavations to take place on national monument properties, the Act requires that a permit be secured before work begins from the departmental Secretary having jurisdiction over the land upon which the site is located. Permits may be granted only for exploration that is for the benefit of "reputable museums, universities, colleges and other recognized scientific or educational institutions". Applications for permits must describe the institution, dates of exploration, persons in charge, character of the work to be undertaken, and the public museum in which collections will be permanently preserved. The permits are granted for a maximum of 3 years with possible extensions but they become void if work does not begin within 6 months. Applications are submitted to the Smithsonian Institution which makes recommendations to the Secretary under whose jurisdiction the land falls and by whom the permits are issued.

The law further provides for penalties for those who attempt to appropriate, excavate, injure or destroy any historic or prehistoric monument or any object of antiquity without getting permission. Persons found violating this law may be fined up to $500, imprisoned for up to 90 days, or both.

Some significant things to remember about the Antiquities Act are that first, even though the law allows for the protection and preservation of cultural sites and artifacts in general, its primary intent is to protect sites that are deemed to be of outstanding national interest and have been declared to be national monuments. Secondly, the Antiquities Act has been found by the courts to be unconstitutionally vague with regard to what is an antiquity (United States vs. Diaz). Therefore the law is virtually unenforcable except under very particular circumstances. The best alternative would be to cite an alleged offender under other cultural resources laws, traditional criminal statutes, or federal agency regulations. The appropriateness of each to the particular situation should be considered.

APPLICABLE FEDERAL REGULATIONS: CFR 43 Part 3, (included in Part VII, STATUTES AND REGULATIONS)

HISTORIC SITES ACT OF 1935
(16 U.S.C. 461, P.L. 74-292, 49 STAT. 666)

This Act declared "that it is a national policy to preserve for public use, historic sites, buildings, and objects of national significance for the inspiration and benefit of the people of the United States". This law set up the administrative structure that allowed the Secretary of the Interior through the National Park Service to locate sites, conduct research and preserve data, acquire property by condemnation or otherwise, contract with political subdivisions or associations which maintain and operate historic or archaeologic sites, rehabilitate sites, set up historic markers, develop educational programs, maintain museums, and promulgate necessary rules and regulations relating to the foregoing functions.

THE RESERVOIR SALVAGE ACT OF 1960
(16 U.S.C. 469, P.L. 86-523, 74 STAT. 220)

The Reservoir Salvage Act established procedures whereby historical and archaeological data might be preserved from loss or damage due to the construction of dams. The Act requires that anyone who plans to construct a dam must notify the Secretary of the Interior of the area to be flooded in order that an archaeological or historical survey can be conducted. Protections are limited to the survey and preservation of sites that are of "exceptional...significance". Specimens and relics recovered as a result of this work are deposited with interested federal and state agencies, educational and scientific organizations, and private institutions.

THE ARCHAEOLOGICAL AND HISTORIC PRESERVATION ACT OF 1974
(16 U.S.C. 469a-1, P.L. 93-291, 88 STAT. 174)

The Act calls for the preservation of historic and archaeological data that would otherwise be lost as a result of federal construction or other federally licensed or assisted activities. It authorizes the Secretary of the Interior, or the agency itself, to undertake recovery, protection, and preservation of such data. When federal agencies find that their undertakings may cause irreparable damage to archaeological resources, the agencies shall notify the Secretary of the Interior, in writing, of the situation. The agencies involved may undertake recovery and preservation with their own project funds, or they may request the Secretary of the Interior to undertake preservation measures.

This Act represents two innovations over previous law: (1) previously only dams were covered however now all federal projects are; and (2) up to 1% of project funds may be used for this purpose. This Act was amended by the National Historic Preservation Act Amendments of 1980.

DEPARTMENT OF TRANSPORTATION ACT OF 1966
(49 U.S.C. 1653 (f) however; cultural resources protection provisions are identical to and contained in 23, U.S.C. 138)

This law as amended by the Federal Aid to Highways Act (1968) directs the Secretary of Transportation not to approve any program or project that requires the use of land from a historic site of national, state, or local significance as determined by federal, state, or local officials having jurisdiction thereof unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such programs include all possible planning to minimize harm to such historic property. This means that such agencies as the Federal Highway Administration, the Urban Mass Transportation Administration, or the U.S. Coast Guard must consider the potential effect of their projects on historic resources whether or not the historic resource affected is listed in or determined to be eligible for the National Register.

THE NATIONAL HISTORIC PRESERVATION ACT OF 1966
(16 U.S.C. 470, P.L. 89-665, 80 STAT. 915)
EXECUTIVE ORDER 11593
NATIONAL HISTORIC PRESERVATION ACT AMENDMENTS OF 1980

The National Historic Preservation Act authorizes the Secretary of the Interior to maintain a National Register of districts, sites, buildings, structures, and objects that are significant in American history, archaeology, architecture, and culture. It also provides for the granting of funds to states for conducting state-wide comprehensive historic surveys and to establish matching grants-in-aid programs for both state historic preservation and the work of the National Trust for Historic Preservation.

The provisions of this Act are carried out primarily at the state level through the Historic Preservation Office. A statewide historic site survey is authorized and a comprehensive statewide historic preservation plan is required. The State Historic Preservation Officer may nominate appropriate properties for inclusion on the National Register based on specific criteria as outlined under the Act. The most significant feature of this act is section 106 which provides:

"The head of any federal agency having direct or indirect jurisdiction over a proposed federal or federally assisted undertaking in any state and the head of any federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in the National Register. The head of any such federal agency shall afford the Advisory Council on Historic Preservation...a reasonable opportunity to comment with regard to such undertaking."

The protective provisions of this Act apply to federal projects that are undertaken, sponsored, permitted, licensed, or funded by federal agencies. The protections are primarily procedural but are significant. They insure that all points of view will be heard before decisions are reached. Putting things out in the open makes agency abuses more difficult and thus less appealing. They also force agencies to spell out reasons for their decisions which, in turn, serve both as a check upon agency process and as a basis for judicial review where appropriate. The procedural protection under the Act is only cautionary in nature as the comments of the Advisory Committee are not binding.

In addition, the procedural protections requires that a project's effect upon a landmark or site be taken into consideration early

enough in the process to allow for alternative proposals and that the Advisory Committee be given reasonable opportunity to comment.

EXECUTIVE ORDER 11593 (1971)

With this order, the President directs agencies to take a leadership role in preserving, restoring, and maintaining the historic environment of the nation. Federal agencies must survey, inventory, and nominate all historic resources under their jurisdiciton or control to the National Register. Until these processes are completed, agency heads must exercise caution to assure that potentially qualified federal property is not inadvertenty transferred, sold, demolished, or substantially altered. When planning projects, agencies are urged to request the opinion of the Secretary of the Interior as to the eligibility for National Register listing of properties whose resource value is questionable or has not been inventoried. Agencies are directed to institute procedures, in consultation with the Advisory Council on Historic Preservation to ensure that federal plans and programs contribute to the preservation and enhancement of nonfederally owned historic resources. The procedures of the Advisory Council recommend that federal agencies comply by identifying all potential historic resources in the environmental impact area of projects which they fund, license, or execute. Properties that have been determined eligible under this process receive the same protection as National Register listed properties under Section 106 of the 1966 Act as amended but they are not eligible to be considered for National Park Service matching grants-in-aid. Substantial portions of this order were incorporated into and modified by the National Historic Preservation Act Amendments of 1980.

NATIONAL HISTORIC PRESERVATION ACT AMENDMENTS OF 1980

These amendments continue existing National Register programs, require public and local government participation in the nomination process, and prohibit listing of properties if the owner objects. The amendments specifically authorize the National Historic Landmarks program, strenthen the role of the state programs, establish statutory authority for existing elements of programs, and establish statutory standards for state programs. Some of the other provisions included in the amendments are the following:

> Federal agencies may waive the 1% limitation on data recovery authorized by the Archaeological and Historic Preservation Act of 1974,

The Secretary of the Interior may direct U.S. participation in the World Heritage Convention and establish procedures for nomination of World Heritage properties,

Membership of the Advisory Council on Historic Preservation is changed and the council is given additional authority to review federal programs and recommend improvements and educate government agencies, organizations and the public concerning council activities, and

Authorizes a system for exemption of programs from Section 106 when impacts are negligible and require procedures for participation of local governments in the Section 106 process.

FEDERAL APPLICABLE REGULATIONS:

Regulations pertaining to the Historic Preservation Act of 1966, Executive Order 11593, and the 1980 amendments include:

36 CFR Part 800, describes the steps for federal agencies to follow to fulfill their responsibilities under section 106 of the Act and serves as a guide for the development of regulations by federal agencies to protect historic properties, (36 CFR Part 800 included in Part VII, STATUTES AND REGULATIONS)

36 CFR Part 61, covers the approval and operation of State historic preservation programs including the responsibilities of the SHPO, the State staff, and the State review board. It also covers development and operation of the Certified Local Government program including certification and transfer of funds to local governments,

36 CFR Part 63 includes the process for determining eligibility and the procedures for review and nomination of eligible properties,

36 CFR Part 60 summarizes the legislative basis for the National Register of Historic Places and outlines National Register criteria for evaluation, the nomination procedure, system of notification, and allowances for changes and revisions to the National Register and,

36 CFR Part 65 outlines the purposes of the National Historic Landmarks program, and sets forth the process used to study, designate, register, and monitor National Historic Landmarks.

THE NATIONAL ENVIRONMENTAL PROTECTION ACT OF 1969
(42 U.S.C. 4321, P.L. 91-190, 83 STAT. 852)

Under the National Environmental Protection Act (NEPA), the federal government committed itself to a policy of preserving and maintaining "productive and enjoyable harmony between man and his environment". Although the Act specifically addresses the problem of eliminating damage to the environment and biosphere it also declares the federal government's continuing responsibility to "preserve the important historic, cultural and natural aspects of our national heritage, and maintain whenever possible an environment which supports diversity and variety of individual choice." Further, the Act requires all federal agencies to "utilize a systematic interdisciplinary approach which will insure the integrated use of the natural and social sciences...and develops methods and procedures...which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decision making...". In order to carry out this policy NEPA includes what has been referred to as the "action-forcing section" in which Congress directs that to the fullest extent possible, all public laws, policies, and regulations of the United States be administered in accordance with NEPA policies and that all agencies of the federal government contemplating actions "significantly affecting the quality of the human environment" prepare Environmental Impact Studies, otherwise known as an EIS.

The EIS is a detailed statement by the responsible official concerning:

The environmental impact of the proposed action,

Any adverse environmental effects which cannot be avoided should the proposal be implemented,

Alternatives to the proposed action, the relationship between local short-term use of man's environment and the maintenance and enhancement of long-term productivity, and

Any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making the statement, the responsible federal official is to consult with and obtain comments from any federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of the EIS and any comments submitted are to be made available at all stages of agency review.

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976
(43 U.S.C. 1701, P.L. 94-579, 90 STAT. 2744)

This Act established federal policies to manage federal lands through the identification and inventory of federal public lands and their resources and through land use planning. Federal lands that are of "critical environmental concern" are given identification and inventory priority. This means areas where special management attention is needed to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life & safety from natural hazards.

Another general policy of the Act requires that federal public lands be managed in a manner that:

> will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archaeological values;
>
> will, where appropriate, preserve and protect certain public lands in their natural condition;
>
> will provide food and habitat for fish and wildlife and domestic animals; and,
>
> will provide for outdoor recreation and human occupancy and use.

In the development and revision of land use plans, the Secretary of Agriculture must coordinate land use plans for lands in the National Forest System with the land use planning and management programs of and for Indian tribes by, among other things, considering the policies of approved tribal land resource management programs.

In administering public land statutes, comprehensive rules and regulations can only be established after considering the views of the general public. Also adjudication procedures must be established to assure adequate 3rd party participation, objective administrative review of initial decisions, and expeditious decisionmaking.

AMERICAN INDIAN RELIGIOUS FREEDOM ACT OF 1978
(42 U.S.C. 1996, P.L. 95-341, 92 STAT. 469)

The American Indian Religious Freedom Act (AIRFA), requires that federal departments and agencies evaluate their enabling statutes, policies, and practices to determine any changes needed in order to allow American Indians to practice their traditional Indian religion without federal interference. The effects of the AIRFA are far reaching and directly impact all federally established laws, policies, and practices in all areas of federal administration. It most particulary impacts all federal historic preservation statutes previously discussed. Federal management of cultural resources must be in compliance with the AIRFA.

As a result of the AIRFA, uniform administrative procedures have been developed in regard to archaeological excavations on federal properties so that American Indian concerns about land, sacred objects, etc. are handled in basically the same way by all agencies. Other methods being utilized to accommodate American Indian religious interests are through the federal land use planning process, inventories, and individual agency policies accompanied by consultation with Native American Indians.

Though federal accommodation has been quite extensive, certain rights of American Indians under the Act are not addressed in the uniform code mentioned. Such rights include:

The right to visit a sacred site on federal public lands,

The right to gather plants on federal public lands for medicines or crafts used in American Indian religious practices, and

The right to hunt on federal lands out of season for religious purposes.

The affirmation of the religious rights of American Indians can be used whenever federal agencies disregard such concerns in the management of Indian cultural resources. In addition the passage of the AIRFA may be helpful in persuading local and state agencies to adopt similar policies regarding American Indian religious freedom.

The question of whether or not the AIRFA is binding upon state and local governments has not yet been tested in the courts.

FOR MORE INFORMATION CONTACT: AREA ARCHAEOLOGIST, Bureau of Indian Affairs, P.O.Box 3785, Portland, Oregon 97208, 503/231-2195.

THE ARCHAEOLOGICAL RESOURCES PROTECTION ACT OF 1979 (16 U.S.C. 470aa, P.L. 96-95, 93 STAT. 721)

Passage of the Archaeological Resources Protection Act (ARPA) marks one of the first inclusions of American Indian concerns in the development of historic preservation policy. The Act enables federal land managers to regulate archaeological research activity and to protect archaeological resources on federal public lands taking into consideration American Indian concerns. Unlike some other laws enacted to protect archaeological sites, the ARPA expands federal protection to sites of "archaeological interest" rather than limiting protection to sites of "national interest" or of "national" or "exceptional" significance. Sites of "archaeological interest" means that a site or object is at least 100 years old and is capable of providing scientific or humanistic understanding of past human behavior, cultural adapation, and related topics through the application of scientific or scholarly techniques.

Furthermore, in 1984 uniform federal regulations were established under this law to assure compliance with the American Indian Religious Freedom Act of 1978. The ARPA applies to all federal lands and Indian lands and contains provisions relating to prohibited acts, permit requirements and exceptions, applications for permits, information collection, notification to Indian tribes, confidentiality of archaeological resource information, and criminal and civil penalties for violations. **Specific provisions relating to American Indians include the following:**

If the issuance of a permit to excavate may result in harm to Indian cultural or religious sites, notice must be given to the appropriate tribe 30 days before issuing the permit at which time discussion can be held to determine ways to avoid or mitigate potential harm. Any mitigation measures adopted must be incorporated into the terms and conditions of the permit.

If excavation activities are conducted by an Indian tribe or a member of a tribe and if the resource is located on Indian lands, no excavation permit is required except when there is an absence of tribal law regulating archaeological resources.

If the federal land manager determines that an excavation permit must be issued immediately because of an imminent threat of loss or destruction of an archaeological resource, the federal land manager must notify the appropriate Indian tribe.

In order to identify sites of religious or cultural importance, the federal land manager must seek and identify

all tribes having aboriginal or historic ties to lands under the federal manager's jurisdictions and seek to determine the location and nature of specific sites of cultural or religious importance.

If the federal land manager becomes aware of a Native American group that is not an Indian tribe but has aboriginal or historic ties to public lands under the federal managers jurisdiction, the land manager may seek to communicate with the official representatives of that group to obtain information on sites they may consider to be of cultural or religious importance.

The federal land manager may enter into agreement with any Indian tribe or Native American group for determining locations for which such tribe or group wishes to receive notice.

The federal land manager may issue a permit for a specified period of time appropriate for the work to be conducted upon determining that written consent has been obtained for work proposed on Indian lands from the Indian landowner and the tribe having jurisdiction over such lands.

The federal land manager must include in permits issued for archaeological work on Indian lands the terms and conditions that are requested by the Indian landowner and the Indian tribe having jurisdiction over the land.

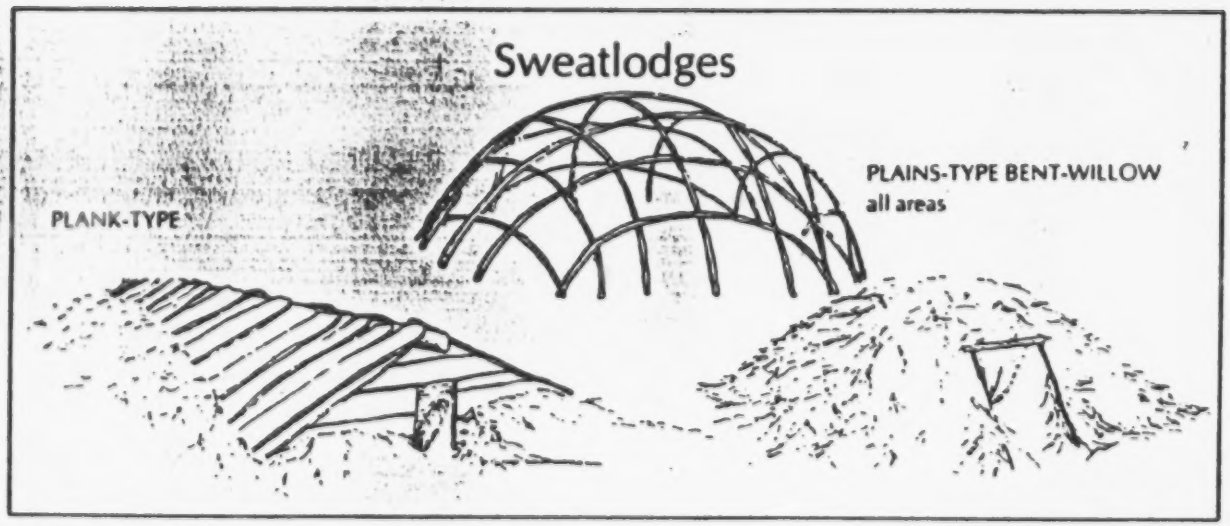
In permits issued for archaeological work conducted on other federal public land, the terms and conditions that were developed in the mitigation process through consultation with the appropriate tribe must be included.

Archaeological resources excavated or removed from Indian lands remain the property of the Indian or the Indian tribe having rights of ownership over such resources.

In cases where violations of the ARPA have been proved, all civil penalty monies and any items forfeited must be transferred to the appropriate Indian or Indian tribe if the violation occurred on Indian lands.

FEDERAL APPLICABLE REGULATIONS: 43 CFR Part 7 (included in Part VII STATUTES AND REGULATIONS)

PART III:
WORKING WITH INDIAN TRIBES IN OREGON



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INDIAN TRIBES: DEFINITIONS

Under many circumstances and on numerous occassions both the state and federal statutes call for notification of, consultation with, or the supervision of an "appropriate Indian tribe". What is meant by an Indian tribe depends on the definition of a tribe that is provided in a particular statute however they generally mean federally recognized tribes and in most instances non-federally recognized tribes. Recognized tribes are generally those that the Federal Government has acknowledged certain treaty or statutory obligations. Non-recognized tribes are those tribes whose federal relations have been severed by congressional action (termination) or those tribes that have never been recognized by the federal government. Some specific definitions of tribes include the following.

STATE OF OREGON DEFINITION: Under all three state laws pertaining to archaeology and Indian burials, a tribe means "any Oregon Indian tribe recognized by the Secretary of the Interior, or listed in the Klamath Termination Act, 25 U.S.C. 3564 et. seq., or listed in the Western Oregon Termination Act, 25 U.S.C. 3691 et. seq." Thus, both recognized and unrecognized tribes have standing under state law.

Under ORS 273.705 (Removal of Historical Objects) and ORS 358.905 (Archaeological Objects and Sites), the definition of an Indian tribe also means "Indian tribes in other states whose cultural areas included Oregon lands."

FEDERAL DEFINITION: Under the Archaeological Resources Protection Act, an Indian tribe means "any Indian tribe, band, nation or other organized group or community including any Alaska Native village or regional village corporation as defined or established pursuant to the Alaska Native Claims Settlement Act." The definition of an Indian tribe is further defined under the ARPA regulations and includes:

> Any tribal entity which is included in the annual list of recognized tribes published in the Federal Register by the Secretary of the Interior,
>
> Any other tribal entity acknowledged by the Secretary of the Interior pursuant to 25 CFR Part 54 since the most recent publication of the annual list,
>
> Any Alaska Native Village or regional or village corporation as established pursuant to the Alaska Native Claims Settlement Act and any Alaska Native village or tribe which is recognized by the Secretary of the Interior as eligible for services provided by the Bureau of Indian Affairs.

The ARPA also permits federal land managers to consult with a Native American group that is not a federally recognized Indian tribe but has aboriginal or historic ties to public lands under federal jurisdiction to obtain information on sites the group may consider to be of cultural or religious significance. Unrecognized tribes fit the definition and like recognized tribes, have standing under the ARPA.

THE TRIBES IN OREGON

The tribes in Oregon consist of both federally and non-federally recognized tribes and both have standing under state statutes and the ARPA. In addition, under some state law, tribes from out of state also have standing if an Oregon site is associated with their culture.

FEDERALLY RECOGNIZED TRIBES IN OREGON: The federally recognized tribe in Oregon are:

Burns Paiute Tribe

Confederated Tribes of Grand Ronde

Confederated Tribes of Siletz Indians of Oregon

Cow Creek Band of Umpqua Indians

Confederated Tribes of Warm Springs Indians

Confederated Tribes of the Umatilla Indian Reservation

Confederated Coos, Lower Umpqua & Siuslaw Tribes

For geographic distribution see Figure 1, this Section: Tribes and Urban Indian Communities of Oregon.

NON-FEDERALLY RECOGNIZED TRIBES: Many tribes and bands are listed in the Klamath and Western Oregon Termination Acts however many of them no longer exist as distinct entities nor are they located in their orginal lands or in their original culture areas.

Prior to the Termination Acts and during the period of 1855-1885, many of these tribes and bands were displaced from their traditional homelands (See figure 2, this section, Tribes and Bands of Traditional Oregon). The descendants of many of the groups identified in the Termination Acts have either diminished, exist as individual descendants with no current tribal affiliation, or exist as members of a confederation or tribe of Native Americans that are either federally or non-federally recognized. Confederations or tribes that are listed in the

Termination Acts and continue to exist as distinct tribal entities include the following:

Klamath Tribe

Coquille Indian Tribe

Chetco Tribal Council

For a comprehensive list of these tribes and bands listed in the Termination Acts consult Table A., this section.

TRIBAL CONFEDERATIONS

Because many Oregon tribes exist as confederations of tribal groups it is often difficult to know which tribal group is associated with which confederation since it is not always apparent in the name used to refer to the tribes. To determine this as best as possible, consult Table B of this section.

WHO IS THE "APPROPRIATE" INDIAN TRIBE?

When there is uncertainty about which tribe to contact, a determination can be made and should always be made first on the basis of a site's cultural orientation. When no such determination can be made because a site is extremely old and a direct link cannot be made to an existing tribe, then it is appropriate to contact the existing tribe that is geographically located nearest to the site. Using a geographic proximity determination is especially appropriate when a site's cultural orientation is that of a no longer existing tribe. See Table C, this section, for a list of tribes, their addresses, phone numbers, etc.)

THE ROLE OF THE COMMISSION ON INDIAN SERVICES

When in doubt about which tribe is appropriate the Commission on Indian Services (454 State Capitol, Salem, Oregon 97310, 503/378-5481), should be contacted to get assistance in locating the most appropriate Indian tribe. It should be noted that contacting the Commission is only for the purposes of obtaining assistance. CONTACTING THE COMMISSION ALONE DOES NOT MEET THE REQUIREMENTS OF THE OREGON LAWS. AN APPROPRIATE TRIBE MUST BE CONTACTED DIRECTLY BY THE PERSON OR AGENCY RESPONSIBLE FOR THE EXCAVATION OF AN AMERICAN INDIAN ARCHAEOLOGICAL SITE OR FOR THE DISTURBANCE OF AN INDIAN BURIAL SITE.

MAKING THE CONTACT

As a matter of courtesy and in some cases as a matter of law, persons planning to excavate a site or disturb an Indian burial, should ALWAYS give advance notice to tribes regarding the contemplated excavation. Advance notice requirements under Oregon statutes for archaeological site excavations on public lands as defined by state law, is 14 days according to Division of State Lands administrative procedure. Requirements under the Oregon Indian Burial Law is 30 days advance notice with application to burial sites on both public and private properties. Under ARPA federal rules, 30 days advance notice is required in most cases with relation to both burial and other sites.

In cases where permits are required, or in other circumstances under the laws, it is ALWAYS advisable to make personal (a phone call is sufficient) and written notification to the tribe. For state permits, it is a good idea to notify the tribe in writing and apply for the permit simultaneously. Advance notification will always help to avoid disagreements or delays in the process.

IT IS ALWAYS MOST APPROPRIATE TO CONTACT THE EXECUTIVE OFFICER OF THE TRIBE. This means the tribal chairperson. Depending on the tribe, the chairperson will take care of the matter him or herself, assign it to a designated tribal official, assign it to a tribal member who has customarily attended to such matters (usually a tribal elder or religious leader), or will assign the matter to a special cultural resources committee.

If a burial or an archaeological site to be excavated is associated with a tribe that is not located in Oregon, it is appropriate under the Oregon archaeological laws to contact that tribe directly. Under the Oregon burial law, the nearest Oregon tribe must be contacted even though the site is not culturally theirs. The nearest Oregon tribe should be contacted to meet the requirements of the law and in most cases the Oregon tribe will probably provide what assistance it can in making the out-of-state contact. Situations like these are most likely to occur in the northern and southern border regions of the state.

TABLE A.
OREGON TRIBES AND BANDS
LISTED IN THE KLAMATH/WESTERN OREGON
TERMINATION ACTS

Klamath Termination Act:

Klamath Tribe	Modoc Tribe	Yahooskin Band of Snake Indians

Western Oregon Termination Act:

Confederated Tribes of the Grand Ronde Community
Confederated Tribes of Siletz Indians

Alsea	Applegate Creek	Calapooya
Chaftan	Chempho	Chetco
Chetlessington	Chinook	Clackamas
Clatskanie	Clatsop	Clowwewalla
Coos	Cow Creek	Euchees
Galic Creek	Grave	Joshua
Karok	Kathlamet	Kusotony
Kwatami or Sixes	Lakmiut	Long Tom Creek
Lower Coquille	Lower Umpqua	Maddy
Mackanotin	Mary's River	Multnomah
Munsel Creek	Naltunnetunne	Nehalem
Nestucca	Northern Mollala	Port Orford
Pudding River	Rogue River	Salmon River
Santiam	Scoton	Shasta
Shasta Costa	Siletz	Siuslaw
Skiloot	Southern Mollala	Takelma
Tillamook	Tolowa	Tualatin
Tututui	Upper Coquille	Upper Umpqua
Yamhill	Yaquina	Yoncalla
Willamette Tumwater		

SOURCE: 25 U.S.C. 3564 et. seq., and 25 U.S.C. 3691

TABLE B.
TRIBAL AND GROUP ASSOCIATIONS OF
OREGON INDIANS

TRIBE OR CONFEDERATION	SPECFIC TRIBES OR BANDS
CONFEDERATED TRIBES GRAND RONDE	Shasta, Takelma, Mollalla, Yaquina, Siletz, Alsea, Tillamook, Kalapuyans, Some Upper Umpqua, (not Cow Creek), Some Chinookans, & other western Oregon tribes and bands.
CONFEDERATED TRIBES OF SILETZ INDIANS	SAME AS ABOVE
CONFEDERATED TRIBES OF COOS, LOWER UMPQUA & SIUSLAW INDIANS	Coos, Lower Umpqua, Siuslaw
CHETCO TRIBAL COUNCIL	Chetco
COQUILLE INDIAN TRIBE	Lower & Upper Coquille
COW CREEK BAND OF UMPQUA INDIANS	Cow Creek Band of Upper Umpqua
CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION	Walla Walla, Cayuse, Umatilla & some Nez Perce & Yakima
CONFEDERATED TRIBES OF WARMS SPRINGS	Warm Springs Bands, Wasco, & Paiute
BURNS PAIUTE TRIBE	Paiute Bands
KLAMATH TRIBE	Klamath, Modoc, Yahooskin Band of Snake Indians

SOURCE: OREGON INDIANS, Zucker, Hummel, Hogfoss, Western Imprints, 1983.

TABLE C.
OREGON INDIAN TRIBES CONTACT LIST

CONFEDERATED TRIBES OF
GRAND RONDE
P.O. Box 94
Grand Ronde, OR 97347
503/879-5253

CONFEDERATED TRIBES OF
SILETZ INDIANS
P.O. Box 549
Siletz, Oregon 97380
503/444-2532

CHETCO TRIBAL COUNCIL
P.O. Box 640
Brookings, OR 97415
503/469-7131

CONFEDERATED COOS,
LOWER UMPQUA, & SIUSLAW TRIBES
533 Buchanan
Coos Bay, Oregon 97420
503/269-2867

COQUILLE INDIAN TRIBE
P.O. Box 4331
Eastside, OR 97420
503/247-7758

KLAMATH TRIBE
P.O. Box 436
Chiloquin, OR 97624
503/884-3844

CONFEDERATED TRIBES OF THE
UMATILLA INDIAN RESERVATION
P.O. Box 638
Pendleton, OR 97801
503/276-3165

CONFEDERATED TRIBES OF
WARM SPRINGS INDIANS
P.O. Box 548
Warm Springs, OR 97761
503/553-1161

BURNS PAIUTE TRIBE
P.O. Box 71
Burns, OR 97720
503/573-7248

COW CREEK BAND OF
UMPQUA INDIANS
283 SE Fowler
Roseburg, Oregon 97420
503/627-9606

SELECTED OUT OF STATE TRIBES

CHINOOK INDIAN TRIBE, INC.
P.O. Box 228
Chinook, WA 98614
206/777-8303

FT. BIDWELL INDIAN COMMUNITY
P.O. Box 127
Fort Bidwell, CA 96112
916/279-6310

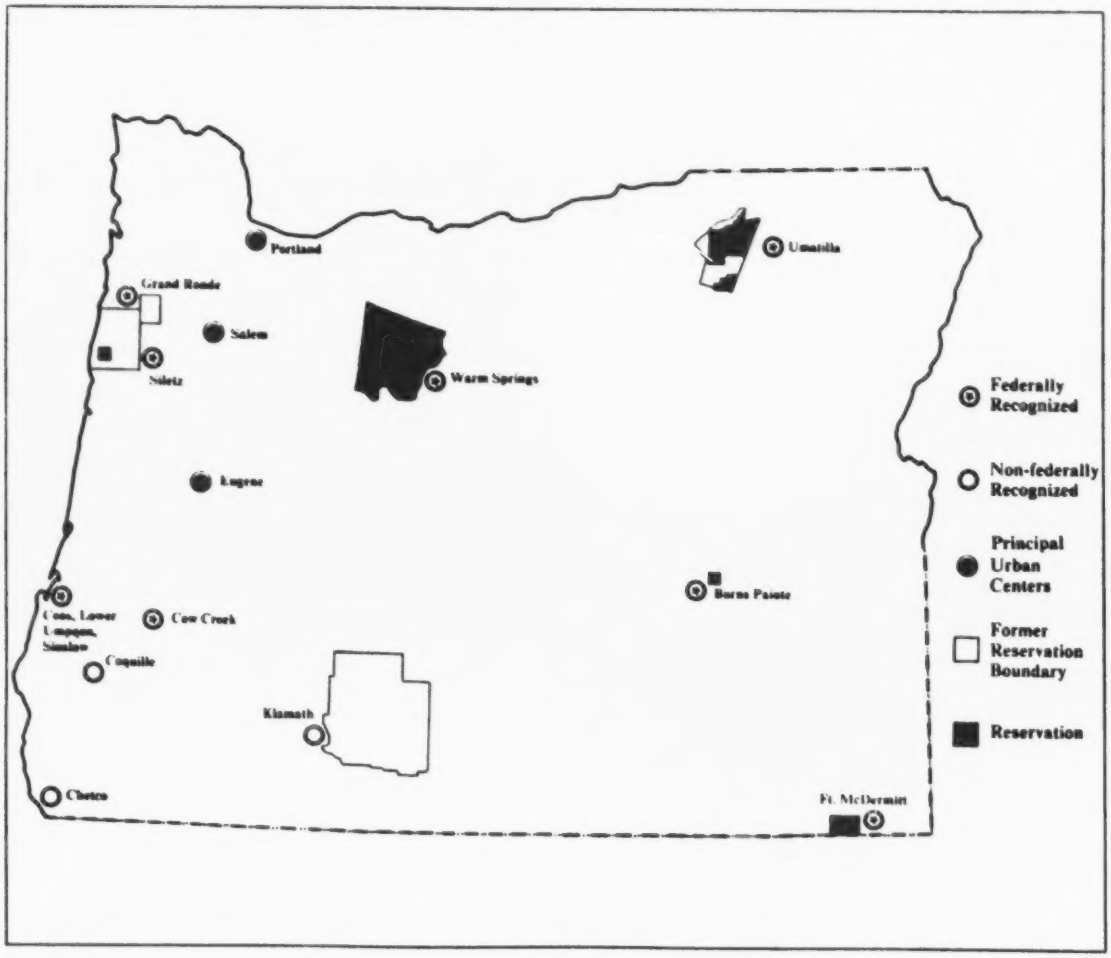
NEZ PERCE TRIBE
P.O. Box 305
Lapwai, ID 83540
208/843-2253

FT. MC DERMITT SHOSHONE-
PAIUTE TRIBE
McDermitt, NV 99421
702/532-8259

SOURCES: 83-85 DIRECTORY OF AMERICAN INDIAN RESOURCES, by the Commission on Indian Services and GOVERNING BODIES OF FEDERALLY RECOGNIZED INDIAN GROUPS, March 1978, by the Bureau of Indian Affairs, U.S. Dept. of Interior.

FIGURE 1.

Oregon Indian Communities



SOURCE: OREGON DIRECTORY OF AMERICAN INDIAN RESOURCES, 1983-85 edition

FIGURE 2.

SOURCE: OREGON INDIANS, By Zucker, Hummel, & Hogfoss, 1983, published by Western Imprints, the Press of the Oregon Historical Society

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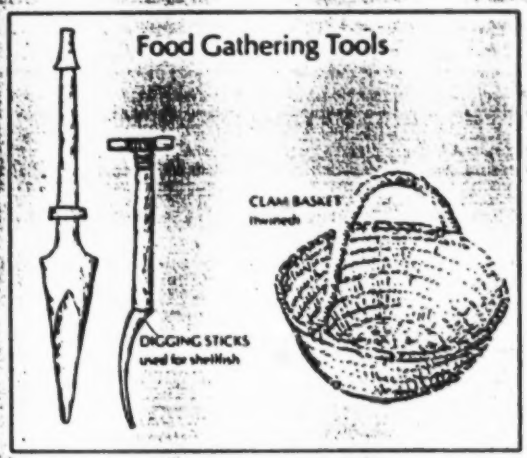
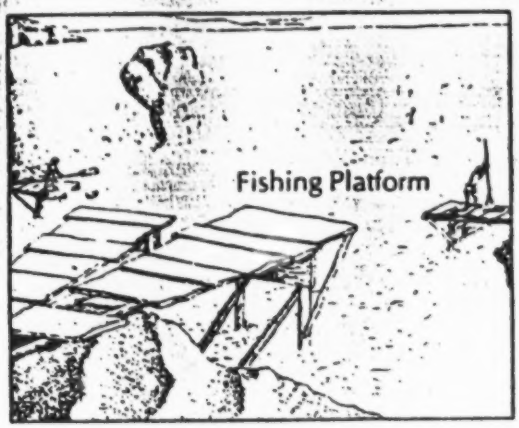
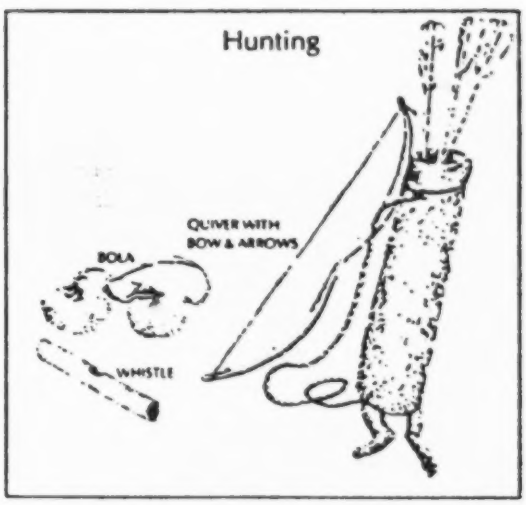


PART IV:
THE ROLE OF TRIBES IN PROTECTING CULTURAL RESOURCES





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THE TRIBAL ROLE IN PROTECTING CULTURAL RESOURCES

The need to protect cultural resources has long been acknowledged as evidenced by the establishment of various laws beginning with the federal Antiquities Act of 1906. The advocation for these protections has traditionally been based upon their value to the scientific and educational community as resources which can provide valuable information about past human existence. It has only been recently that cultural resources laws have been framed to take into consideration the needs and concerns of American Indian communities who also seek the protection of cultural resources but do so with different values in mind. The added provisions which now speak to the concerns of American Indians endow tribes with new responsibilities and new rights which have established them as co-managers of the resource with local, state, and federal agencies.

Agencies are generally responsible for administering and enforcing the statutes. Their responsibilities in doing so often require them to develop administrative processes designed to solicit input and consultation from tribes to insure that tribal concerns do not go unconsidered. Tribal participation in the processes thus becomes essential so that the provisions of the laws can be appropriately carried out.

The establishment of protective laws and participation in administrative processes are not the only avenues available for ensuring that cultural resources are protected. To explore those avenues, this section of the handbook discusses various initiatives that tribes can undertake. Adopting these initiatives will take considerable thought, work, and planning. However, in the long run, being prepared will enable tribes to avoid many crisis situations, will help the tribe to understand more clearly their own rights and responsibilities under the laws, will help those outside the tribe such as agencies and archaeologists to know and understand what tribes expect and what is important to the tribes, will help to facilitate more cordial and effective coordination and communication with others, and will enable tribes to more effectively assert their rights to influence decisions made in regard to the protection of cultural sites that are important to them.

BEING INFORMED

In order to be certain that the laws are applied properly and to be sure of what a tribe or community's rights and responsibiities are, it's important to know something about what the laws provide for and how they work. Sometimes key deadlines pass for commenting on or challenging activities that may be harmful to a cultural resource because people are unaware of the

procedures they must follow in order to have their views considered. Similarly government agencies and others conducting or approving threatening activities may be unaware of the laws or their own obligations. Being informed about the laws and their procedures will enable American Indian communities to submit timely comments and/or objections which may cause plans for the intended activity to be redirected or altered in order to halt the harmful activity or to establish ways of minimizing the damage to the resource. Providing timely input can also serve to remind or inform agencies and others of their responsibilities.

ESTABLISHING A CULTURAL RESOURCES LAW LIBRARY: To be informed of laws and procedures, tribes may want to establish a reference library of cultural resources laws and procedural regulations. Copies of the laws and the procedural regulations can always be obtained from libraries, (especially those that serve as federal document depositories like the State Library or the Oregon St. University Library), or from the agencies responsible for administering the laws. So that the reference library is useful, it should always be organized and kept updated with changes in the law. A natural place for housing such a library may be within a tribe's natural resources or land planning office, a tribal archives center, or any place that is easily accessible to tribal members and those who have responsibilty for managing the tribe's cultural resources concerns.

FINDING OUT ABOUT PLANNED ACTIONS: Being informed also means finding out and knowing about projects and or other actions being planned that may affect cultural resources in a particular area. The sooner one knows what is happening, the more one can do about it.

Some laws require specific notification to tribes and Indian communities on projects that may affect cultural resources. Under these circumstances, the work of knowing and finding out about projects is greatly simplified. Also, in these laws and others, there are usually other requirements that are designed to inform the public in some manner regarding certain types of planned actions. Various means are used to do this; notices in newspapers, posting of notices in government buildings, posting at the project site, etc. Unfortunately sometimes these methods are inadequate and projects can move a long way toward government approval before citizens know what is going on. In practical terms, the burden of finding out what is going on still rests on the Indian community. To keep informed it is advisable to use several techniques:

Watch the newspapers carefully, published notices of upcoming governmental decisions are often small notices buried somewhere in the ad section. Usually such notices are located under "Public" or "Legal" notice sections.

Watch the agendas of city and county offices and those of state and federal agencies that control projects in the area. Local governments frequently publish agendas for the meetings of boards of supervisors, city councils, and planning commissions. Other local agencies such as water districts often make their agendas available only upon request. In order to be informed, request that agendas be sent on a regular basis or stop by the government offices to see them.

Ask in writing to be kept informed about specific projects that one might already be aware of.

Get to know and be known by staff members of government agencies. Often staff persons who get to know you will be helpful in keeping you informed.

If you have a particular concern about a certain project, find out when and where various decisions will be made on the project and who will make them.

UNDERSTANDING THE LAWS

It isn't always easy to understand what laws and regulations provide for. If tribal members have difficulty understanding the laws and regulations, it is essential to find a way to gain that understanding so that the laws can be used effectively.

Tribal members can get help to assist them in more clearly comprehending the laws and regulations by getting the tribal attorney to explain them, requesting the assistance of administering agency personnel, enlisting the aid of environmental groups who are usually well informed about environmental protection laws and often have attorneys on staff, or contacting instructors at university law schools or anthropology departments. In many cases assistance will be volunteered. A good beginning point for finding out about persons who could help in explaining the meaning of the laws and regulations would be to contact the State Historic Preservation Office.

ESTABLISHING A TRIBAL CULTURAL RESOURCES MANAGEMENT SYSTEM

How can tribes do all the things they need to do to protect cultural resources? Besides trying to keep informed and up to date on cultural resources law or advocating concerns in various public forums, tribes have numerous other cultural resources responsibilities to keep up with such as attending to the number of state and federal law requirements that call for tribal input.

Tribes receive notices about proposed projects which they are asked to comment on; they're asked to review and comment on permit applications for conducting an archaeological excavation; they are contacted by archaeologists to establish pre-determined arrangements for handling sacred artifacts if they are found; they are contacted to grant their consent for excavating burial sites; and, they are often contacted to supervise the reinterment of burial remains.

Handling all of these cultural resources matters can be difficult however a tribe can organize itself to meet the challenges. Though tribes may have their own ideas about how to manage cultural resources concerns, one effective and efficient way to do it is to establish a tribal cultural resources committee to handle all of these concerns. Sometimes tribes have designated one tribal member to handle these concerns. This system works better than no system at all but establishing a committee has the added advantage of distributing the responsibilities among several persons. Having only one person to take care of cultural resources matters is sometimes a hindrance to taking necessary speedy action on a matter because if that person is not available, any action necessary cannot be accomplished. Establishing a cultural resources committee that is a separate entity under the authority of a tribal council would help a great deal to simplify and expedite tribal actions. It also helps to relieve the burden of the tribal council which has many other responsibilities. Some suggestions as to how a committee might be formed and how it might operate are as follows.

First, the tribal council could appoint at least three persons to form a committee. The committee's first assignments would be to draw up plans on how it should operate, decide what its responsibilities will be, and develop tribal policies and procedures on handling cultural resources issues.

DEVELOPING COMMITTEE OPERATIONS: In developing plans on how the committee should operate, consideration might be given to:

the size of the committee and whether the committee should be an independent tribal citizens group or a part of a tribal department, or

how much authority the committee should have and under what circumstances should the committee defer to a tribal council decision, rather than rely on its own authority.

COMMITTEE RESPONSIBILITIES: Some examples of the kinds of responsibilities that a committee could establish for itself are:

Being the tribe's official contact unit for archaeologists who must notify and consult with tribes on many of their proposed excavation projects,

Being the tribe's official contact unit for evaluating excavation permits submitted to the tribe for review;

Preparing tribal responses to requests for consent to excavate burial sites;

Researching cultural history by interviewing tribal members or consulting anthropological studies to determine what artifacts the tribe would consider to be sacred objects;

Working out the details of agreements for handling sacred artifacts if they are uncovered in a site;

Researching and maintaining a record-keeping system of all the items previously mentioned;

Researching and preparing applications for the state or national historic register on sites that should appropriately be nominated;

Working with agencies and archaeologists to determine ways to avoid or mitigate potential harm to an important site;

Researching and knowing about cultural resources law and establishing a reference library;

Establishing policies and procedures for reviewing or acting on various cultural resources matters like excavation permits;

Surveying and developing a confidential tribal list of cultural and religious sites important to the tribe;

Monitoring sites important to the tribe to assure site protection;

Coordinating and communicating with other tribes, historic preservation groups, governmental agencies, etc. on matters and activities relating to cultural resources protection or preservation;

Being responsible for related projects such as establishing a tribal museum or a tribal archives program;

Advocating on behalf of the tribe at public input forums such as land use planning hearings and monitoring governmental plans or actions that will affect cultural resources, or;

Developing tribal policies and plans or advocating for the establishment of laws and policies in other arenas such as within local, state, and federal governmental systems.

DEVELOPING TRIBAL POLICIES AND PROCEDURES: In the development of policies and procedures for handling cultural resources matters, some examples of policies & procedures that the committee might consider establishing are:

A policy that archaeologists, government agencies, etc. must give the tribe at least two weeks advance notice for providing comment, advice, etc., or

A policy that establishes tribal preferences for methods of protecting cultural resources. The first preference could be preserving a site as part of a park, monument, shrine, or controlled area. The second preference could be leaving the site in its natural state. A third preference could be burial or other non-destructive means of covering the site permanently; and so on down the list.

GIVING THE COMMITTEE OFFICIAL AUTHORITY: Once the committee has developed a plan on how the cultural resources committee will operate, what its responsibilities will be, and has designed appropriate procedures for handling various cultural resources matters, the tribal council should approve the plan and make any amendments that it deems necessary. These responsibilities will of course be on-going and subsequent policy or operation changes may be needed. If changes are made, they should always be approved by the tribal council.

As part of the approval process, the cultural resources committee needs to be granted the authority to act on behalf of the tribe in cultural resources matters so that the committee will be acting in an "official" capacity. The granting of this authority also needs to include permitting the committee and its members to act independently in most situations without tribal council approval but within the limits of the overall plan as approved by the tribal council.

GETTING THE LAWS TO WORK FOR YOU

The cultural resources laws discussed in this handbook depend in great part on the community for effectiveness. If they are to protect the resources, tribes need to act as monitors, taking an active role in ensuring that the laws are followed. Staying informed and organizing tribal efforts are great ways to begin the effort to protect cultural resources however other strategies may be helpful.

INFORMING THE PUBLIC & GETTING SUPPORT: Sometimes letting the public know about the tribe's cultural resources concerns can result in added support. In many situations agencies are open to persuasion by the public; moreover, elected officials are particularly sensitive to public opinion. If public support for tribal concerns can be built either for their general efforts or in a particular situation, the tribe may be more successful in protecting the resources.

There are a number of ways to inform the public and gain its support. Publicizing tribal concerns through the print, radio, and television media can help. This kind of "free" publicity seldom comes spontaneously so work is needed to obtain it by making it as easy as possible for the media. Press releases can be issued to all media outlets giving the who, what, where, why and how of the tribal cultural resources concern. In press releases, invite the media to ask more questions. Press conferences are also helpful and can reach all three kinds of media at the same time. It should be used only for very strong stories.

Radio time is relatively easy to obtain since stations generally use a great deal of newscopy. Television time is somewhat more difficult to obtain. The more graphics, visuals, and action that the tribe can promise about their concern, the more it will catch the interest of TV media. Print media strategies include getting newspaper reporters to write stories about the tribal concern, writing a "guest editorial," or writing letters to the editor. In letters to the editor, logic and humor are often more effective than a harsh statement. To secure editorial support, an appointment to speak with the newspaper editor and/or publisher should be made to explain the concern. Being frank about the need for editorial support is also essential.

Throughout a publicity campaign, keep in mind that the public's memory is short. An issue must be presented over and over again before it makes a significant impression. Plan the campaign so that you get the maximum mileage out of it so as to build a story in the public consciousness.

ENLISTING ALLIES: Another way of getting public support is to consider doing some "coalition politicking." Identify potential allies who may also have an interest in protecting cultural resources. Possible interest groups include environmental & conservation groups, historic preservation & archaeological societies, and civil rights and church groups. If groups agree on the basic issue of a situation, the tribe can work with them. The cooperation that a tribe can obtain from interest groups is varied. It can include getting the group to advocate for the concerns of the tribe at public hearings or it can mean getting the group to take a public position. Whatever the degree of cooperation, the alliance should not be visible. Each group should appear to be acting independently and spontaneously. Coalition politics of this type is the way in which many groups increase their effectiveness far beyond their numbers.

STATING THE CASE AND BEING PERSUASIVE

Many decisions concerning cultural resources are made at public hearings and through review and comment processes. To be effective in getting decision makers to appropriately address tribal cultural resources concerns, begin by identifying who will make the decision and when. Many decisions move through different levels, building upon the recommendations of boards, commissions, and agencies. Identify the steps and work to get a favorable decision at each. Also, identify the method of appealing an unfavorable decision and use if necessary.

LOBBYING: By meeting with decision makers before a hearing or prior to the end of the comment and review period, a tribe can demonstrate the seriousness of their concerns. Such a meeting provides decision makers with the chance to talk with tribal members outside the glare of a public setting. The decision maker will be able to speak more frankly about the issues, admit to areas of ignorance, or reveal the arguments of opposing interests. The effects of this is that tribal members can go to the public hearing later or prepare their comments knowing more about the problems that need to be overcome in order to obtain a favorable decision. Lobbying also gives tribal members the opportunity to count the votes ahead of time: who is favorable, who is not and who is undecided. With this information arguments can be sharpened to reach undecided votes and sway the majority decision in the tribe's favor.

PREPARING TESTIMONY & REVIEW PROCESS COMMENTS: Preparing for a public hearing and/or the comment and review process should also include approaching staff members who assist the decision makers. Decision makers often rely heavily on their own advisors so, as far as possible, try to get the staff on your side. In preparing testimony for a hearing or comments for review, keep the following in mind:

Be brief, avoid repetition, & concentrate on hitting all the important points.

Have facts well in hand. Know as much as possible about the issue in question. If land use is the issue, find out all you can about ownership, taxes paid, zoning, existing resources, and governmental policies concerning land use.

Consider getting publicity & get allies to make statements on the issue either in person or through written statements.

Emphasize the points that really count. If something seems to be bothering the decision makers about the issue, try to find out what it is and speak persuasively to the concern to resolve it. Hearings do not only provide the opportunity to express concerns. They also provide the chance to discover what is on the minds of those you must persuade.

Get on record if necessary. If the decision will be appealed later in court, the record will be needed. Any issue that will be be raised in a court needs to be in the record. If you do not argue a point in the hearing or through the comment & review process, it can't be brought up in court. If making a record in a hearing means speaking longer than the chairperson will allow, explain the reason for needing additional time.

If a decision goes against the tribe, immediately ask for a reconsideration of the question. This is a legal tactic that may save time later if the issue goes to court; judges sometimes order a question to be sent back for reconsideration by the public agency if such action has not already ocurred.

If a decision is in the tribe's favor, those who voted in the tribe's favor publicly should be thanked. Include thanks to any staff members who were supportive. There may come a day when their good will is needed again.

AVOIDING A CRISIS

A good way to protect cultural resources is to plan ahead and take steps to protect them before a threat arises. Some preservation approaches include getting local laws adopted, persuading property owners, and informing government agencies about cultural resources.

GETTING LOCAL LAWS ADOPTED: The Oregon Indian community is fortunate in that statewide policies such as the burial and archaeological resources protection laws have been enacted to protect cultural resources. While these state statutes are

binding on local governments, tribes may want to encourage city and county governments to establish their own formal procedures on protecting cultural resources in compliance with state law or they may want to encourage local governments to go beyond the requirements of state laws and establish ordinances that are appropriate to the area. An example of this would be to get local governments to establish ordinances that are consistent with the provisions of the American Indian Religious Freedom Act.

Also, what about tribal cultural resources protection codes? If a tribe has its own cultural resources protection laws on their reservation, the liklihood of cultural resources being protected in the manner that the tribe wants them to be protected is greater. In the absence of tribal cultural resources protection laws, federal statutes generally apply, (See discussion of the Archaeological Resources Protection Act of 1979 for specific provisions relating to this topic). An example of a tribal policy for protecting cultural resources is included at the end of this handbook section as Exhibit A.

PERSUADING PROPERTY OWNERS: In some cases a property owner may be willing to cooperate to protect a cultural resource if a benefit can be pointed out. A tribe may be able to protect a cultural site located on the property of a particular land owner by asking the owner to consider nominating the site to a local, state, or federal register of historic sites. If a site is so designated, the owner may be eligible for a freeze or reduction on property taxes for that portion of the property that contains the cultural resource. Similar benefits are available if a property owner agrees to a "conservation easement" as discussed in the handbook section; "State Laws That Protect." Also, there are some federal laws that provide for:

> charitable contribution deductions for easements and other forms of restrictions or use in order to preserve a historically important land area or structure, (Tax Treatment Extension Act of 1980: PL 97-248) or,
>
> Investment tax credits to encourage owners or lessees to rehabilitate older buildings, (Revenue Act of 1980: PL 95-600).

The tools for encouraging property owners to protect cultural sites are numerous and not limited to those mentioned here. Contact the State Historic Preservation Office for additional information.

INFORMING GOVERNMENT ABOUT LOCAL CULTURAL RESOURCES: If the planning agencies of government are aware of cultural resources before projects are proposed, the projects can be planned from the outset to avoid harm to the resources. Tribes should

consider taking the initiative in informing such agencies as county and city planning departments about the location of cultural sites.

Many traditional American Indian persons are reluctant to provide information for fear it will lead to vandalism or intrusion by the public. A tribe can insist however, on giving the information solely to a department head or a specifically appointed representative and only if a commitment is made to keep the information secret. In spite of laws providing that all government information is open to the public, there is an exception for information of this kind in almost all cultural resources protection laws. In addition to providing information on sites, tribes should also consider giving a list of knowledgeable tribal members to government agencies. In this way, agencies will know whom to contact for information or consultation when a project is proposed.

THE LAST RESORT: COURT ACTION

When tribal concerns with cultural resources are not appropriately addressed in accordance with various laws and regulations, tribes may have rights to pursue legal recourse actions. Many of these rights are provided for in State cultural resources protection statutes. These actions depending on the laws, permit tribes to obtain prohibitive orders through the courts to prevent the disturbance of a cultural site until issues can be resolved or, allow tribes and tribal individuals to bring suit against someone who willfully violates the laws.

While tribes and individuals should not refrain from pursuing legal options if they are necessary, they should always consider such actions as a last resort and every effort should be made to work out matters through the usual processes and procedures and through communication. When it becomes necessary to resort to legal action because the issue is important enough and because nothing else will work, then tribes should use this prerogative reasonably and judiciously.

EXHIBIT A.

TRIBE X: POLICY WITH REGARD TO HISTORIC, SACRED, AND ARCHAEOLOGICAL SITES

Tribe X maintains an historical, cultural, and religious interest in its homeland, Y Valley. It is a basic tribal intent that the sacred, historical, and archaeological sites of its people be protected and preserved, as a matter of right and for the enlightenment and inspiration of future generations. In keeping with this intent, the following policies are established.

No person shall damage, deface, or destroy, or cause to be damaged, defaced, or destroyed, any religious, historical, or archaeological site lying on lands controlled by the Tribe without first gaining the specific approval of the Tribal Council.

No action that might endanger such sites, including mining, road-building, real estate development, deep-plowing, land-leveling, or public recreation shall be taken on lands controlled by the Tribe without first assessing the impact of such a project on religious, historical or archaeological sites, and developing ways to reduce such impact. All impact assessments must be reviewed for adequacy by the (Tribal historian, consulting archaeologist, or other qualified official) and be submitted with comments to the (Tribal Council, Tribal Cultural Resources Specialist, Tribal Cultural Resources Committee) for approval. If the project will damage such sites, permission to proceed will be conditional upon provisions for adequate protection of the sites in question.

Acceptable means of reducing the impact of a project on religious, historic, and archaeological sites, depending on circumstances, are generally the following in descending order of preference:

Protection of the site as part of a park, monument, shrine, or controlled area.

Leaving the site in its natural condition.

Burial or other non-destructive covering of the site.

Excavation of the site by an archaeologist or archaeologists acceptable to the tribe, with all materials and information recovered remaining the property of the tribe.

All members of the tribe are strongly encouraged to adhere to the above policies with reference to their own properties.

This Tribe encourages all property owners and developers in the Y Valley to adhere to policies similar to the above and reminds federal, state and local public agencies of the compatible policies established by the National Environmental Policy Act or other appropriate law) and other federal laws (state laws and local ordinances if applicable).

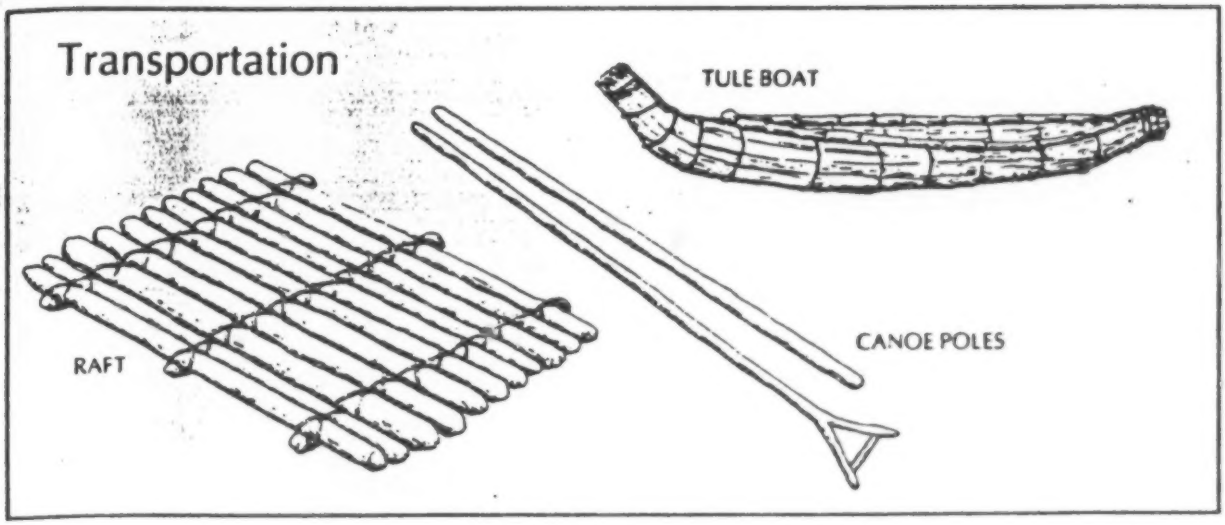
The Tribe will move vigorously to acquire and protect sites important to its history according to a master plan to be designed by the (Tribal historian or other cognizant official or committee) in consultation with all members and with appropriate specialists.

SOURCE: Adapted from King, THE INDIAN HISTORIAN, published by the American Indian Historical Society, San Francisco, CA: Fall 1972, at pp. 34-35.

PART V:

REPORTING

CRIMINAL VIOLATIONS



REPORTING CRIMINAL VIOLATIONS

When criminal violations of cultural resources laws occur, they should be reported promptly and directly to the law enforcement staff of the agency having jurisdiction. This is more appropriate than contacting the agency's staff archaeologist however the archaeologist can help to determine the appropriate contact. A partial list of agencies having responsibility for enforcing cultural resources protection laws in Oregon are as follows:

STATE AGENCIES

STATE HISTORIC PRESERVATION OFFICE
525 Trade Street SE
Salem, OR 97310
503/378-5002

OREGON STATE POLICE
107 Public Service Building
Salem, Oregon 97310
TOLL FREE STATE-WIDE EMERGENCY #: 1-800-7888

FEDERAL AGENCIES

LAW ENFORCEMENT SPECIAL AGENT IN CHARGE
Department of Interior
Fish and Wildlife Service
500 NE Multnomah, Suite 1692
Portland, Oregon 97232
503/231-6125

LAW ENFORCEMENT
Department of Interior
Bureau of Land Management
825 NE Multnomah
Portland, Oregon 97232
503/231-6875, 231-5315

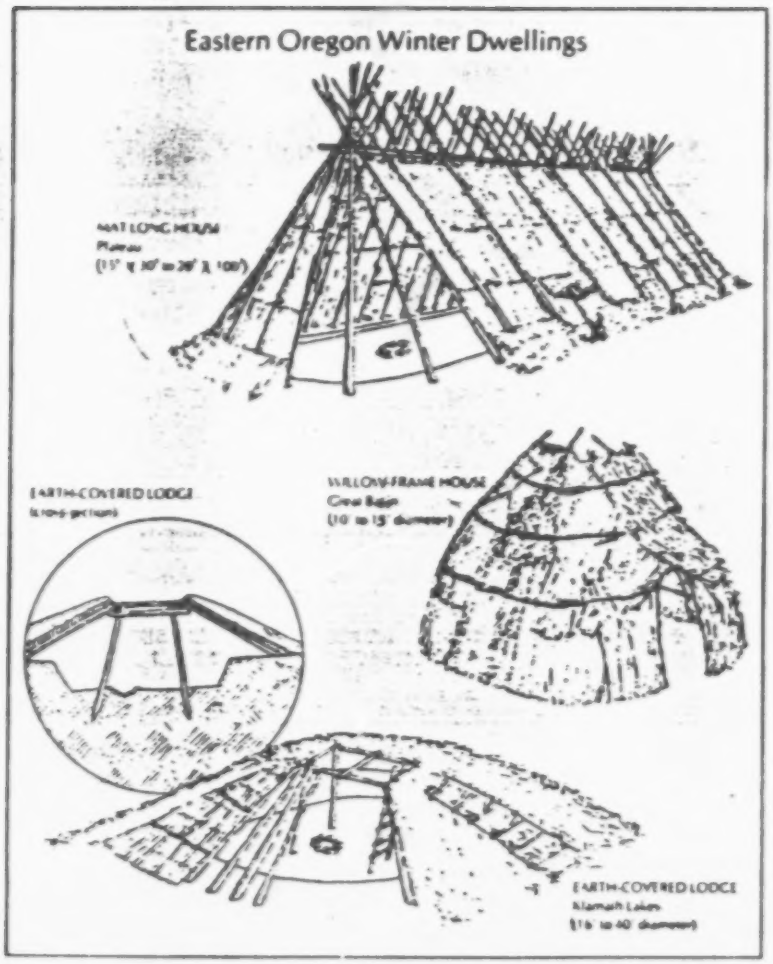
LAW ENFORCEMENT STAFF
Department of Agriculture
U.S. Forest Service
319 SW Pine Street
Portland, Oregon 97204
503/221-2962, 221-2236

AREA SPECIAL OFFICER
Department of Interior
Bureau of Indian Affairs
Portland Area Office
1425 NE Irving
P.O. Box 3785
Portland, Oregon 97208
503/231-2195

SECURITY AND LAW ENFORCEMENT
U.S. Army Corp of Engineers
North Pacific Division
220 NW 8th
Portland, Oregon 97209
503/221-3875

U.S. ATTORNEY'S OFFICE
312 U.S. Courthouse
620 SW Main St.
Portland, OR 97205
503/221-2101

FEDERAL BUREAU OF INVESTIGATION
1500 SW 1st Avenue
Portland, OR 97201
503/224-4181



PART VI:
SOURCES OF
OTHER INFORMATION

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SOURCES OF OTHER INFORMATION

PUBLICATIONS

CULTURAL RESOURCES HANDBOOK: 1980 First Edition by Dorothy Gray and published by the Native American Heritage Commission, 1400 10th Street, Sacramento, California. Contains information on cultural resources laws and utilizing administrative processes effectively to protect cultural resources.

"WHAT IS AMERICA'S HERITAGE? HISTORIC PRESERVATION LAW AND AMERICAN INDIAN CULTURE": By Paul Wilson and Elaine Oser Zingg and published in the Kansas Law Review, Vol. 22 pp. 413-453, 1974. An expansive article which discusses historic preservation law and its impact on preserving American Indian cultural resources. Also contains suggestions on the development of tribal cultural resources protection policies.

NATIVE AMERICAN RELIGIOUS PRACTICES AND USES: By Stephen Dow Beckham, Kathryn Toepel, & Rick Minor. Volume III of the Cultural Resources Overview of the Siuslaw National Forest, Western Oregon, 1982. This final report provides information on the American Indian Religious practices of western Oregon Indians. Obtainable through the Siuslaw National Forest, P.O. Box 1148, Corvallis, Oregon, 97330.

CULTURAL RESOURCES HANDBOOK: Portland Area Addendum, 30 BIAM, Supplement 2, 1983, by Barry H. Holt, Area Archaeologist, Portland Area Office, Bureau of Indian Affairs, P.O. Box 3785, Portland, OR 97208. The handbook discusses BIA policies and procedures for protecting cultural resources on Indian lands and other lands under the jurisdiction of the agency.

PRESERVATION RESOURCE DIRECTORY: published by the Portland Junior League, Preservation Resource Center, 26 NW Second, Portland, OR 97209. Contains listings of federal & state preservation programs, state and local preservation organizations, Oregon historical landmarks commissions, Oregon historical societies, national preservation related organizations, and other statewide preservation organizations in western Oregon.

CURRENT ARCHAEOLOGICAL HAPPENINGS IN OREGON: a quarterly newsletter published by the Association of Oregon Archaeologists. Contains up to date information on significant archaeological projects, discussions on cultural resources protection laws, and AOA activities. Also, the AOA has a standing offer to provide newsletter space to American Indians for the publication of comments on archaeological topics. P.O. Box 40393, Portland, Oregon 97240.

NATIVE AMERICAN ARCHIVES: by John Fleckner and available through the Society of American Archivists, 330 S. Wells St., Suite 810, Chicago, Illinois, 60606. Contains information on how tribes can set up their own archives.

IDENTIFYING AND ASSESSING HISTORICAL CULTURAL RESOURCES IN THE PACIFIC NORTHWEST: By Stephen Dow Beckham, for the USDA Forest Service, Portland, Oregon, 1978. Contains extensive photographs illustrating the wide range of historical, cultural resources in this region and how to assess them for age, style, materials, and historical significance. Available free from the U.S. Forest Service, 314 SW Pine Street, Portland, Oregon.

AMERICAN INDIANS AND AMERICAN ARCHAEOLOGY: By Sprague in American Antiquity, 39(1): 1-2, (1974). Available through libraries.

EXCAVATION OF AMERICAN INDIAN BURIAL SITES: By L. Rosen in American Anthropology. 82: 1980, pp. 5-27. Available through libraries.

AMERICAN INDIAN RELIGIOUS FREEDOM AND CULTURAL RESOURCES MANAGEMENT: By Suagee in 10, American Indian Law Review. #1, 1983. Available through libraries.

NATIVE AMERICANS VS. ARCHAEOLOGISTS: in 10, American Indian Law Review: #1, 1983.

THE CRISIS IN OREGON ARCHAEOLOGY: by Thomas Newman, in Tebiwa, Vol. 14:1-3, 1971. Available through libraries.

ARCHAEOLOGY OF OREGON: By Mel Aickens, published by the Bureau of Land Management, 1984. Is a general synthesis of Oregon Prehistory. Contact Professor Aickens at the Department of Anthropology, University of Oregon, Eugene, Oregon for more information.

ORGANIZATIONS

ASSOCIATION OF OREGON ARCHAEOLOGISTS, P.O. Box 17256 Salem, Oregon 97305. Phone # of current chairperson can be obtained by contacting the staff archaeologist at the SHPO, 503/378-5002

HISTORIC PRESERVATION LEAGUE OF OREGON, Oregon Preservation Resource Center P.O. Box 40184, 26 NW Second Ave. Portland, OR 97209 503/243-1923

ADVISORY COMMITTEE ON HISTORIC PRESERVATION, State Historic Preservation Office 525 Trade St. SE Salem, OR 97310 503/378-5002

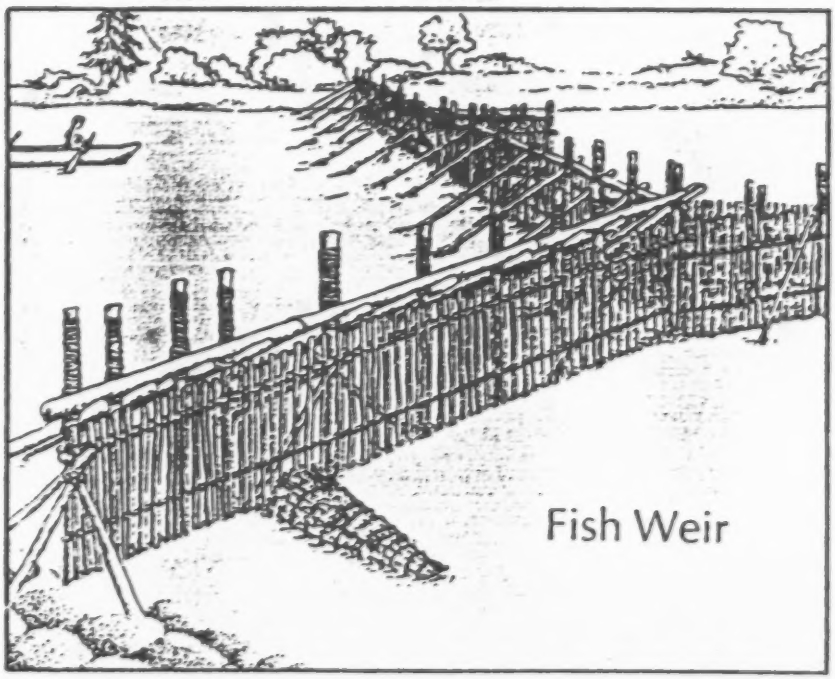
OREGON HISTORICAL SOCIETY, 1230 SW Park Avenue Portland, OR 97205 503/222-1741

OREGON MUSEUMS ASSOCIATION, Alice Carnes, President, % WISTEC, 2300 Centennial Blvd., Eugene, OR 97403.

NATIVE AMERICAN RIGHTS FUND, 1506 Broadway, Boulder, CO, 80210. Can provide information about the American Indian Religious Freedom Act. 303/698-2911.

NATIONAL INDIAN YOUTH COUNCIL, 201 Hermosa NE, Albuquerque, NM, 81708. Has done extensive research and has advocated for the rights of American Indians with regard to the American Indian Religious Freedom Act. 505/266-7966.

PART VII: STATUTES AND REGULATIONS



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REMOVAL OF HISTORICAL AND OTHER VALUABLE MATERIALS

ORS 273.705 - ORS 273.711

REMOVAL OF HISTORICAL AND OTHER VALUABLE MATERIALS

(Historical Materials)

273.705 Permits and conditions for excavation or removal of archaeological or historical material from state lands. (1)(a) A person may not excavate or alter an archaeological site on public lands, make an exploratory excavation on public lands to determine the presence of an archaeological site or systematically remove from public lands any material of an archaeological, historical, prehistorical or anthropological nature without first obtaining a permit issued by the Division of State Lands in consultation with the state historic preservation office.

(b) If a person who obtains a permit under this section intends to keep an archaeological object that is uncovered during an archaeological investigation, the person must submit evidence to the state historic preservation office that the Oregon State Museum of Anthropology has approved the applicant's curatorial facilities.

(c) No permit shall be effective without the approval of the state agency or local governing body charged with management of the public land on which the excavation is to be made.

(d) The Director of the Division of State Lands, with the advice of the state historic preservation officer and the Executive Secretary of the Commission on Indian Services, shall adopt rules governing the issuance of permits.

(e) Before issuing a permit, the Director of the Division of State Lands shall consult with:

(A) The state historic preservation officer; and

(B) If the archaeological site in question is associated with a prehistoric or historic American Indian culture:

(i) The Commission on Indian Services; and

(ii) The most appropriate Indian tribe.

(2) The Division of State Lands may issue a permit under subsection (1) of this section under the following circumstances:

(a) To a person conducting an excavation, examination or gathering of such material for the benefit of a recognized scientific or educational institution with a view to promoting the knowledge of archaeology or anthropology;

(b) To a qualified archaeologist to salvage such material from unavoidable destruction; or

(c) To a qualified archaeologist sponsored by a recognized institution of higher learning, private firm, an Indian tribe as defined in ORS 97.740 or any other Indian tribe whose traditional cultural area includes Oregon lands.

(3) Any archaeological materials recovered by a person granted a permit under subsection (2) of this section shall remain the property of the State of Oregon to be curated by the Oregon State Museum of Anthropology unless:

(a) The Oregon State Museum of Anthropology approves the alternate curatorial facilities selected by the permittee;

(b) The materials are made available for research by scholars on the recommendation of the director of the Oregon State Museum of Anthropology; and

(c)(A) The material is retained by a recognized scientific or educational institution for whose benefit a permit was issued under paragraph (a) of subsection (2) of this section;

(B) The State Board of Higher Education grants approval for material to be curated by an educational or tribal facility other than the institution that collected the material pursuant to a permit issued under paragraph (a) of subsection (2) of this section; or

(C) The sponsoring institution, firm or Indian tribe under paragraph (c) of subsection (2) of this section furnishes the Oregon State Museum of Anthropology with a complete catalog of the material within six months after the material is collected.

(4) As used in this section:

(a) "Private firm" means any legal entity that:

(A) Has as a member of its staff a qualified archaeologist; or

(B) Contracts with a qualified archaeologist who acts as a consultant to the entity and provides the entity with archaeological expertise.

(b) "Qualified archaeologist" means a person who has the following qualifications:

(A) A post-graduate degree in archaeology, anthropology, history, classics or other germane discipline with a specialization in archaeology, or a documented equivalency of such a degree;

(B) Twelve weeks of supervised experience in basic archaeological field research, including both survey and excavation and four weeks of laboratory analysis or curating; and

(C) Has designed and executed an archaeological study, as evidenced by a Master of Arts or Master of Science thesis, or report equivalent in scope and quality, dealing with archaeological field research. [Formerly 273.250; 1977 c.397 §1; 1983 c.620 §13]

273.710 [Amended by 1967 c.421 §9; renumbered 273.055]

273.711 Removal without permit. In addition to the provisions of ORS 273.241 and 273.990 (2), if any individual or institution excavates or removes from the land designated in ORS 273.705 any materials of archaeological, historical, prehistorical or anthropological nature without obtaining the permit required in ORS 273.705, all materials and collections removed from such lands shall become the property of the State of Oregon and shall be assigned to the Oregon State Museum of Anthropology. [Formerly 273.260; 1977 c.397 §2]

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ARCHAEOLOGICAL SITES AND OBJECTS
ORS 358.905 - ORS 358.955

ARCHAEOLOGICAL OBJECTS AND SITES

358.905 Definitions for ORS 358.905 to 358.955. As used in ORS 192.005, 192.500, 273.705 and 358.905 to 358.955:

(1) "Archaeological object" means an object that:

(a) Is at least 75 years old;

(b) Comprises the physical record of an indigenous and subsequent culture; and

(c) Is material remains of past human life or activity that are of archaeological significance including, but not limited to, monuments, symbols, tools, facilities, technological by-products and dietary by-products.

(2) "Archaeological site" means a geographic locality in Oregon, including but not limited to submerged and submersible lands and the bed of the sea within the state's jurisdiction, that contains archaeological objects and the contextual associations of the archaeological objects with:

(a) Each other; or

(b) Biotic or geological remains or deposits.

(3) "Indian tribe" has the meaning given that term in ORS 97.740.

(4) "Police officer" has the meaning given that term in ORS 181.610.

(5) "Public lands" means any lands owned by the State of Oregon, a city, county, district or municipal or public corporation in Oregon.

(6) "Sacred object" means an archaeological object that:

(a) Is demonstrably revered by any ethnic group, religious group or Indian tribe as holy; and

(b) Was or is used in connection with the religious or spiritual service or worship of a deity or spirit power. [1983 c.620 §1]

358.910 Policy. The Legislative Assembly hereby declares that:

(1) Archaeological sites are acknowledged to be a finite, irreplaceable and nonrenewable cultural resource, and are an intrinsic part of the cultural heritage of the people of Oregon. As such, archaeological sites and their contents located on public land are the property of the people of Oregon to be protected and managed in perpetuity by the state as a public trust.

(2) The State of Oregon shall preserve and protect the archaeological heritage of this state against neglect, destruction and misappropriation. [1983 c.620 §2]

358.915 Application. The provisions of ORS 192.005, 192.500, 273.705, 273.990 and 358.905 to 358.955 do not apply to a person who unintentionally discovers an archaeological object on public land or private property and retains the object for personal use. [1983 c.620 §15]

358.920 Prohibited conduct. (1) A person may not excavate, injure, destroy or alter an archaeological site or systematically remove an archaeological object located on public lands in Oregon unless that activity is authorized by a permit issued under ORS 273.705.

(2) A person may not sell or purchase, or offer to sell or purchase, any archaeological object that has been removed from an archaeological site on public land or obtained from private land within the State of Oregon without the written permission of the landowner.

(3) A person may not sell or offer to sell any archaeological object unless the person furnishes the purchaser a certificate of origin to accompany the object that is being sold or offered for sale.

(4) As used in subsection (3) of this section, "certificate of origin" means:

(a) If the archaeological object was acquired after October 15, 1983, a statement that discloses:

(A) The location from which the archaeological object was removed; and

(B) That the object was obtained according to the provisions of ORS 192.005, 192.500, 273.705, 273.990 and 358.905 to 358.955; or

(b) If the archaeological object was acquired before October 15, 1983, a statement that the object was acquired before October 15, 1983.

(4) A person may not excavate an archaeological site on privately owned property unless that person has the property owner's written permission.

(5) This section does not apply to a person who disturbs an Indian cairn or grave. Any person who disturbs an Indian cairn or grave for any reason shall comply with the provisions of ORS 97.740 to 97.750. [1983 c.620 §3]

358.925 Seizure of archaeological objects; forfeiture; procedure. (1) All archaeological objects or proceeds from the sale of archaeological objects in the possession of any person in violation of the provisions of ORS 273.705, 358.905, 358.910 or 358.920 to 358.955 shall be seized by any police officer.

(2) All property, real or personal, including money, used in the course of, derived from or realized through conduct in violation of a provision of ORS 273.705, 358.905, 358.910 or 358.920 to 358.955 is subject to civil forfeiture to the state. The state shall dispose of all forfeited property as soon as commercially feasible. If property is not exercisable or transferable for value by the state, it shall expire. All forfeitures or dispositions under this section shall be made with due provision for the rights of innocent persons.

(3) Property subject to forfeiture under this section may be seized by a police officer upon court process. Seizure without process may be made if:

(a) The seizure is incident to a lawful arrest or search or an inspection under an administrative inspection warrant; or

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a forfeiture proceeding based upon this section.

(4) In the event of a seizure under subsection (1) of this section, a forfeiture proceeding shall be instituted promptly. Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the police officer making the seizure, subject only to the order of the court. When property is seized under this section, pending forfeiture and final disposition, the police officer may:

(a) Place the property under seal;

(b) Remove the property to a place designated by the court; or

(c) Require another agency authorized by law to take custody of the property and remove it to an appropriate location.

(5) The Attorney General, any district attorney or any state agency having jurisdiction over conduct in violation of a provision of ORS 273.705, 358.905, 358.910 and 358.920 to 358.955 may institute civil proceedings under this section. In any action brought under this section, the circuit court shall give priority to the hearing and determination. Pending final determination, the circuit court may at any time enter such injunctions, prohibitions or restraining orders, or take such actions, including the acceptance of satisfactory performance bonds, as the court may deem proper.

(6)(a) The defendant or any injured person may demand a trial by jury in any civil action brought pursuant to this section.

(b) Any injured person shall have a right or claim to forfeited property or to the proceeds derived therefrom superior to any right or claim the state has in the same property or proceeds.

(7) A final judgment or decree rendered in favor of the state in any criminal proceeding for

a violation of ORS 273.705, 358.905, 358.910 and 358.920 to 358.955 shall estop the defendant in any subsequent civil action or proceeding brought by the state or any other person as to all matters as to which such judgment or decree would be an estoppel as between the state and the defendant.

(8) Notwithstanding any other provision of law, a criminal or civil action or proceeding for a violation of ORS 273.705, 358.905, 358.910 and 358.920 to 358.955 may be commenced at any time within five years after the conduct in violation of a provision of ORS 273.705, 358.905, 358.910 and 358.920 to 358.955 terminates or the cause of action accrues. If a criminal prosecution or civil action or other proceeding is brought, or intervened in, to punish, prevent or restrain any violation of the provisions of ORS 273.705, 358.905, 358.910 and 358.920 to 358.955, the running of the period of limitations prescribed by this section with respect to any cause of action arising under ORS 358.955 which is based in whole or in part upon any matter complained of in any such prosecution, action or proceeding shall be suspended during the pendency of such prosecution, action or proceeding and for two years following its termination.

(9) The application of one civil remedy under any provision of ORS 273.705, 358.905, 358.910 and 358.920 to 358.955 shall not preclude the application of any other remedy, civil or criminal, under ORS 192.005, 192.500, 273.705, 273.990 and 358.905 to 358.955 or any other provision of law. Civil remedies under ORS 192.005, 192.500, 273.705, 273.990 and 358.905 to 358.955 are supplemental and not mutually exclusive. [1983 c.620 §4]

358.930 Return of property to owner; surety. (1) At any time after property is seized under ORS 358.925, but before the entry of judgment, the owner of the seized property may require the return thereof upon giving to the court a written undertaking, executed by sufficient surety, approved by the court to the effect that such surety is bound in double the value of the property as determined by the court, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to the plaintiff of such sum as may, for any cause, be recovered against the owner. The owner shall file such written undertaking with the clerk of the court for the county in which the seizure occurred and shall serve a true copy thereof upon the district attorney for the same county.

(2) If confiscation or forfeiture of such property is required by a judgment of the court under ORS 358.925, the owner shall return the property to the plaintiff. If the owner fails to return the property, any police officer may maintain an action upon such undertaking. [1983 c.620 §5]

358.935 Preservation of seized objects. (1) Any archaeological object or proceeds seized under the provisions of ORS 358.925 shall be preserved and retained. At the time the court sentences the defendant or orders bail forfeited in the criminal prosecution for violation of the archaeology laws, the court may order that any archaeological object or proceeds from the sale of an archaeological object seized under ORS 358.925 shall be forfeited. Any archaeological object seized under the provisions of ORS 192.005, 192.500, 273.705, 273.990 and 358.905 to 358.955 shall be retained by the state and deposited in the Oregon State Museum of Anthropology.

(2) If the archaeological objects or proceeds seized under ORS 358.925 are not subsequently forfeited, the state historic preservation office shall return or arrange for the return of the objects or proceeds, as the case may be, to the person from whom they were seized. [1983 c.620 §6]

358.940 Reinterment of remains. A person who disturbs native Indian remains at or associated with an archaeological site shall reinter those remains under the supervision of an Indian tribe as provided in ORS 97.750 (2) and (3). [1983 c.620 §7]

358.945 Notice required upon finding of sacred object; exception. (1) If a person who is conducting an archaeological investigation on public lands according to the provisions of ORS 273.705 or on private land with the owner's written permission finds a sacred object, the person conducting the archaeological investigation shall notify in writing:

(a) The state historic preservation office; and

(b) The appropriate ethnic group, religious group or Indian tribe that the sacred object is associated with.

(2) If a sacred object is recovered on public land, the state historic preservation office shall authorize the appropriate group to repossess the sacred object.

(3) This section does not apply to the contents of an Indian cairn or grave regulated under ORS 97.740 to 97.750. [1983 c.620 §8]

358.950 When notice to Indian tribe required; report. (1) Any person who conducts an archaeological excavation associated with a prehistoric or historic American Indian

archaeological site shall notify the most appropriate Indian tribe including Indian tribes in other states whose cultural areas included Oregon land. The notification shall include, but not be limited to:

(a) The location and schedule of the forthcoming excavation;

(b) A description of the nature of the investigation; and

(c) The expected results of the investigation.

(2) After notifying the appropriate Indian tribe under subsection (1) of this section, the person conducting the archaeological excavation shall consult a representative of the tribe to establish a procedure for handling sacred objects recovered during the archaeological excavation.

(3) A delegate from the appropriate Indian tribe may be present during the excavation.

(4) If requested, the Commission on Indian Services shall assist a person in locating the appropriate Indian tribe.

(5) At the conclusion of the investigation, the person conducting the excavation shall prepare and forward a copy of a report on excavation findings to the Commission on Indian Services and to the appropriate Indian tribe. [1983 c.620 §9]

358.955 Civil enforcement. (1) Any person or the Attorney General, on behalf of the state, may institute a civil proceeding against a person who violates the provisions of ORS 273.705, 358.920, 358.945 or 358.950. In such proceeding, relief shall be granted in conformity with the principles that govern the granting of injunctive relief in other civil cases, except that no showing of special or irreparable damage to the person shall have to be made. Upon the execution of the proper bond against damages for an injunction improvidently granted and a showing of immediate danger of significant loss or damage, a temporary restraining order or a preliminary injunction may be issued in any such action before a final determination on the merits.

(2) In any proceeding brought under this section, the court may allow the prevailing party to recover costs, expert witness fees, and reasonable attorney fees at trial and upon appeal.

(3) The Attorney General may, upon timely application, intervene in any civil action or proceeding brought under subsection (1) of this section if the Attorney General certifies that in the opinion of the Attorney General, the action or proceeding is of general public importance. In such action or proceeding, the state shall be entitled to the same relief as if the Attorney General instituted the action or proceeding.

(4) The application of one civil remedy under any provision of ORS 192.005, 192.500, 273.705, 273.990 and 358.905 to 358.955 shall not preclude the application of any other remedy under ORS 192.005, 192.500, 273.705, 273.990 and 358.905 to 358.955 or any other provision of statutory or common law. Civil remedies under ORS 192.005, 192.500, 273.705, 273.990 and 358.905 to 358.955 are supplemental and not mutually exclusive. [1983 c.620 §10]

PROTECTION OF INDIAN GRAVES
ORS 97.740 -ORS 97.760

97.745 Prohibited acts. (1) Except as provided in ORS 97.750, no person shall wilfully remove, mutilate, deface, injure or destroy any cairn or grave of any native Indian. Persons disturbing native Indian graves through inadvertence, including by construction, mining, logging or agricultural activity, shall at their own expense reinter the human remains under the supervision of the appropriate Indian tribe.

(2) No person shall:

(a) Possess any native Indian artifacts or human remains taken from a native Indian cairn or grave on or after October 3, 1979, in a manner other than that authorized under ORS 97.750.

(b) Publicly display or exhibit any native Indian human remains.

(c) Sell any native Indian artifacts or human remains taken from a native Indian cairn or grave.

(3) This section does not apply to:

(a) The possession or sale of native Indian artifacts discovered in or taken from locations other than native Indian cairns or graves or artifacts that were removed from cairns or graves by other than human action; or

(b) Actions taken in the performance of official law enforcement duties. [1977 c.647 §2; 1979 c.420 §1; 1981 c.442 §4]

97.750 Permitted acts; notice. (1) If such action is necessary to protect the burial from imminent destruction, and upon prior notification to the State Historic Preservation Office and to the appropriate Indian tribe in the vicinity of the intended action, a professional archaeologist may excavate a native Indian cairn or grave and remove material objects and human remains for subsequent reinterment under the supervision of the Indian tribe.

(2) Except as provided in subsection (1) of this section, any proposed excavation by a professional archaeologist of a native Indian cairn or grave shall be initiated only after prior written notification to the State Historic Preservation Office and with the prior written consent of the appropriate Indian tribe in the vicinity of the intended action. Failure of a tribe to respond to a request for permission within 30 days of its mailing shall be deemed consent. All material objects and human remains removed during such an excavation shall, following scientific study, be reinterred at the archaeologist's expense under the supervision of the Indian tribe.

(3) In order to determine the appropriate Indian tribe under this section and ORS 97.745, a professional archaeologist or other person shall

PROTECTION OF INDIAN GRAVES

97.740 Definitions for ORS 97.740 to 97.750. For the purposes of ORS 97.740 to 97.750 and 97.990 (8):

(1) "Professional archaeologist" means a person who has extensive formal training and experience in systematic, scientific archaeology.

(2) "Indian tribe" means any Oregon Indian tribe recognized by the Secretary of the Interior or listed in the Klamath Termination Act, 25 U.S.C. 3564 et seq., or listed in the Western Oregon Indian Termination Act, 25 U.S.C. 3691 et seq. [1977 c.647 §1; 1981 c.442 §3]

consult with the Commission on Indian Services which shall designate the appropriate tribe. [1977 c.647 §3; 1979 c.420 §2; 1981 c.442 §5]

97.760 Civil action by Indian tribe or member; time for commencing action; venue; damages; attorney fees. (1) Apart from any criminal prosecution, an Indian tribe or enrolled member thereof shall have a civil action to secure an injunction, damages or other appropriate relief against any person who is alleged to have violated ORS 97.745. The action must be brought within two years of the discovery of the violation by the plaintiff. The action may be filed in the circuit court of the county in which the subject grave, cairn, remains or artifacts are located, or within which the defendant resides.

(2) Any conviction pursuant to ORS 97.990 (8) shall be prima facie evidence of a violation of ORS 97.745 in an action brought under this section.

(3) If the plaintiff prevails:

(a) The court may award reasonable attorney fees to the plaintiff;

(b) The court may grant injunctive or such other equitable relief as is appropriate, including forfeiture of any artifacts or remains acquired or equipment used in the violation. The court shall order the disposition of any items forfeited as it sees fit, including the reinterment of any human remains in accordance with ORS 97.745 (1);

(c) The plaintiff shall recover imputed damages of $500 or actual damages, whichever is greater. Actual damages include special and general damages, which include damages for emotional distress;

(d) The plaintiff may recover punitive damages upon proof that the violation was wilful. Punitive damages may be recovered without proof of actual damages. All punitive damages shall be paid by the defendant to the Commission on Indian Services for the purposes of Indian historic preservation; and

(e) An award of imputed or punitive damages may be made only once for a particular violation by a particular person, but shall not preclude the award of such damages based on violations by other persons or on other violations.

(4) If the defendant prevails, the court may award reasonable attorney fees to the defendant. [1981 c.442 §2]

STATE LAND USE PLANNING LAW
ORS 197.005 - ORS 197.850
(ORS not included, other information substituted)

Oregon Land Conservation And Development Commission

STATEWIDE PLANNING GOALS and Guidelines

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INTRODUCTION TO THE GOALS and Guidelines

Comprehensive Plans and Statewide Goals

Comprehensive plans in Oregon carry out statewide planning goals. The 19 goals in this tabloid were adopted after extensive citizen involvement in public workshops and hearings. The goals are regulations to be followed by citizens and governments. In Oregon, goals are applied and implemented through a comprehensive plan.

Guidelines are not mandatory. They are suggested directions for local governments to consider when developing comprehensive plans and applying the goals.

What is a Comprehensive Plan?

A comprehensive plan is a set of public decisions dealing with how the land, air and water resources of an area are to be used or not used. These decisions are reached after considering the present and future of an area.

Being comprehensive in scope, the plan provides for all the resources, uses, public facilities and services in an area. It also incorporates the plans and programs of the various governmental units into a single management tool for the planning area.

Developing Comprehensive Plans

Citizens of a planning area and public officials gather information on roads, sewers, schools, parks, agricultural lands, employment, housing, geologic hazards, natural resources, recreation and other topics in the development of the comprehensive plan. Using this information, problems are sorted through, alternative solutions considered, and decisions made.

At the same time, citizens and public officials consider various plans and programs affecting their area such as the highway system, or economic plans for the region. By working together, cities, counties, special districts and state and federal agencies coordinate their plans to avoid conflicts.

As citizens and officials ask questions, locate information, find answers and make choices, the statewide goals are to be considered. Goals express the concerns Oregonians want addressed in comprehensive plans. The goal requirements represent issues to be included among other more local concerns being addressed by the plan.

Comprehensive Plans— Simple or Complex?

It is important to realize that a comprehensive plan for a small community that is experiencing relatively few problems, a slow rate of growth or little change, may be quite simple. A more extensive comprehensive plan will probably be required for larger communities that are facing many problems, rapid growth or where there are many changes taking place.

Comprehensive Plans And Citizen Involvement

For a comprehensive plan to truly reflect the nature of an area, people with personal knowledge and background must be involved in the development of the plan. Citizen involvement will aid in resolving any conflicts or overlapping of the statewide goals that may exist when the goals are applied through the comprehensive plan. Residents of an area can usually best determine how to resolve these problems by reviewing the facts and considering the various alternatives available and their consequences.

The result of all these actions will be a comprehensive plan that meets the needs and desires of the people, complements plans elsewhere in the state, and carries out the statewide goals.

FOR MORE INFORMATION

If you would like more information concerning Oregon's comprehensive planning program, contact:

Oregon Department
of Land Conservation
and Development
1175 Court Street N.E.
Salem, OR 97310
PH: 378-4926

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1. CITIZEN INVOLVEMENT

GOAL: To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

The governing body charged with preparing and adopting a comprehensive plan shall adopt and publicize a program for citizen involvement that clearly defines the procedures by which the general public will be involved in the on-going land-use planning process.

The citizen involvement program shall be appropriate to the scale of the planning effort. The program shall provide for continuity of citizen participation and of information that enables citizens to identify and comprehend the issues.

Federal, state and regional agencies and special purpose districts shall coordinate their planning efforts with the affected governing bodies and make use of existing local citizen involvement programs established by counties and cities.

The citizen involvement program shall incorporate the following components:

1. **Citizen Involvement** — To provide for widespread citizen involvement.

   The citizen involvement program shall involve a cross-section of affected citizens in all phases of the planning process. As a component, the program for citizen involvement shall include an officially recognized citizen advisory committee or committees broadly representative of geographic areas and interests related to land use and land use decisions. Citizen advisory committee members shall be selected by an open, well-publicized public process.

   The citizen advisory committee shall be responsible for: assisting the governing body with the development of a program that promotes and enhances citizen involvement in land use planning, assisting in the implementation of the citizen involvement program and evaluating the process being used for citizen involvement.

   If the governing body wishes to assume the responsibility for development as well as adoption and implementation of the citizen involvement program or to assign such responsibilities to a planning commission, a letter shall be submitted to the Land Convervation and Development Commission for the State Citizen Involvement Advisory Committee's review and recommendation stating the rationale for selecting this option, as well as indicating the mechanism to be used for an evaluation of the citizen involvement program. If the planning commission is used, its members shall be selected by an open, well publicized public process.

2. **Communication** — To assure effective two-way communication with citizens.

   Mechanisms shall be established which provide for effective communication between citizens and elected and appointed officials.

3. **Citizen Influence** — To provide the opportunity for citizens to be involved in all phases of the planning process.

   Citizens shall have the opportunity to be involved in the phases of the planning process as set forth and defined in the goal and guidelines for Land Use Planning, including Preparation of Plans and Implementation Measures, Plan Content, Plan Adoption, Minor Changes and Major Revisions in the Plan and Implementation Measures.

4. **Technical Information** — To assure that technical information is available in an understandable form.

   Information necessary to reach policy decisions shall be available in a simplified, understandable form.

   Assistance shall be provided to interpret and effectively use technical information. A copy of all technical information shall be available at a local public library or other location open to the public.

5. **Feedback Mechanisms** — To assure that citizens will receive a response from policymakers.

   Recommendations resulting from the citizen involvement program shall be retained and made available for public assessment. Citizens who have participated in this program shall receive a response from policymakers. The rationale used to reach land use policy decisions shall be available in the form of a written record.

6. **Financial Support** — To insure funding for the citizen involvement program.

   Adequate human, financial and informational resources shall be allocated for the citizen involvement program. These allocations shall be an integral component of the planning budget. The governing body shall be responsible for obtaining and providing these resources.

GUIDELINES FOR CITIZEN INVOLVEMENT GOALS

1. **CITIZEN INVOLVEMENT**
   - A. A program for stimulating citizen involvement should be developed using a range of available media (including television, radio, newspapers, mailings and meetings).
   - B. Universities, colleges, community colleges, secondary and primary educational institutions and other agencies and institutions with interests in land use planning should provide information on land use education to citizens, as well as develop and offer courses in land use education which provide for a diversity of educational backgrounds in land use planning.
   - C. In the selection of members for the Citizen Advisory Committee, the following selection process should be observed: citizens should receive notice they can understand of the opportunity to serve on citizen advisory committees; citizen advisory committee appointees should receive official notification of their selection; and, citizen advisory committee appointments should be well publicized.

2. **COMMUNICATION**
   - A. Newsletters, mailings, posters, mailback questionnaires, and other available media should be used in the citizen involvement program.

3. **CITIZEN INFLUENCE**
   - A. **Data Collection** — The general public through the local citizen involvement programs should have the opportunity to be involved in inventorying, recording, mapping, describing, analyzing and evaluating the elements necessary for the development of the plans.
   - B. **Plan Preparation** — The general public, through the local citizen involvement programs, should have the opportunity to participate in developing a body of sound information to identify public goals, develop policy guidelines and evaluate alternative land conservation and development plans for the preparation of the comprehensive land use plans.
   - C. **Adoption Process** — The general public, through the local citizen involvement programs, should have the opportunity to review and recommend change to the proposed comprehensive land use plans prior to the public hearing process to adopt comprehensive land use plans.
   - D. **Implementation** — The general public, through the local citizen involvement programs, should have the opportunity to participate in the development, adoption and application of legislation that is needed to carry out a comprehensive land use plan.

     The general public, through the local citizen involvement programs, should have the opportunity to review each proposal and application for a land conservation and development action prior to the formal consideration of such proposal and application.
   - E. **Evaluation** — The general public, through the local citizen involvement programs, should have the opportunity to be involved in the evaluation of the comprehensive land use plans.
   - F. **Revision** — The general public, through the local citizen involvement programs, should have the opportunity to review and make recommendations on proposed changes in comprehensive land use plans prior to the public hearing process to formally consider the proposed changes.

4. **TECHNICAL INFORMATION**
   - A. Agencies that either evaluate or implement public projects or programs (such as, but not limited to: road, sewer, water construction, transportation, subdivision studies and zone changes) should provide assistance to the citizen involvement program. The roles, responsibilities and timeline in the planning process of these agencies should be clearly defined and publicized.
   - B. Technical infomation should include, but not be limited to: energy, natural environment, political, legal, economic and social data and places of cultural significance, as well as those maps and photos necessary for effective planning.

5. **FEEDBACK MECHANISM**
   - A. At the onset of the citizen involvement program, the governing body should clearly state the mechanism through which the citizens will receive a response from the policymakers.
   - B. A process for quantifying and synthesizing citizen's attitudes should be developed and reported to the general public.

6. **FINANCIAL SUPPORT**
   - A. The level of funding and human resources allocated to the citizen involvement program should be sufficient to make citizen involvement an integral part of the planning process.

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2. LAND USE PLANNING

GOAL:

PART I - PLANNING: To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.

City, county, state and federal agency and special district plans and actions related to land use shall be consistent with the comprehensive plans of cities and counties and regional plans adopted under ORS 197.705 through 197.795.

All land use plans shall include identification of issues and problems, inventories and other factual information for each applicable state-wide planning goal, evaluation of alternative courses of action and ultimate policy choices, taking into consideration social, economic, energy and environmental needs. The required information shall be contained in the plan document or in supporting documents. The plans, supporting documents and implementation ordinances shall be filed in a public office or other place easily accessible to the public. The plans shall be the basis for specific implementation measures. These measures shall be consistent with and adequate to carry out the plans. Each plan and related implementation measure shall be coordinated with the plans of affected governmental units.

All land use plans and implementation ordinances shall be adopted by the governing body after public hearing and shall be reviewed and, as needed, revised on a periodic cycle to take into account changing public policies and circumstances, in accord with a schedule set forth in the plan. Opportunities shall be provided for review and comment by citizens and affected governmental units during preparation, review and revision of plans and implementation ordinances.

Affected Governmental Units — are those local governments, state and federal agencies and special districts which have programs, land ownerships or responsibilities within the area included in the plan.

Comprehensive Plan — as defined in ORS 197.015 (4).

Coordinated — as defined in ORS 197.015 (4). Note: It is included in the definition of comprehensive plan.

Implementation Measures — are the means used to carry out the plan. These are of two general types: (1) management implementation measures such as ordinances, regulations or project plans, and (2) site or area specific implementation measures such as permits and grants for construction, construction of public facilities or provision of services.

Plans — as used here encompass all plans which guide land use decisions, including both comprehensive and single purpose plans of cities, counties, state and federal agencies and special districts.

PART II - EXCEPTIONS: When, during the application of the statewide goals to plans, it appears that it is not possible to apply the appropriate goal to specific properties or situations, then each proposed exception to a goal shall be set forth during the plan preparation phases and also specifically noted in the notices of public hearing. The notices of hearing shall summarize the issues in an understandable and meaningful manner.

If the exception to the goal is adopted, then the compelling reasons and facts for that conclusion shall be completely set forth in the plan and shall include:

(a) Why these other uses should be provided for;
(b) What alternative locations within the area could be used for the proposed uses;
(c) What are the long term environmental, economic, social and energy consequences to the locality, the region or the state from not applying the goal or permitting the alternative use;
(d) A finding that the proposed uses will be compatible with other adjacent uses.

PART III - USE OF GUIDELINES: Governmental units shall review the guideline set forth for the goals and either utilize the guidelines or develop alternative means that will achieve the goals. All land use plans shall state how the guidelines or alternative means utilized achieve the goals.

Guidelines — are suggested directions that would aid local governments in activating the mandated goals. They are intended to be instructive, directional and positive, not limiting local government to a single course of action when some other course would achieve the same result. Above all, guidelines are not intended to be a grant of power to the state to carry out zoning from the state level under the guise of guidelines. (Guidelines or the alternative means selected by governmental bodies will be part of the Land Conservation and Development Commission's process of evaluating plans for compliance with goals).

GUIDELINES:

1. **PREPARATION OF PLANS AND IMPLEMENTATION MEASURES**

Preparation of plans and implementation measures should be based on a series of broad phases, proceeding from the very general identification of problems and issues to the specific provisions for dealing with these issues and for interrelating the various elements of the plan.

During each phase opportunities should be provided for review and comment by citizens and affected governmental units.

The various implementation measures which will be used to carry out the plan should be considered during each of the planning phases.

The number of phases needed will vary with the complexity and size of the area, number of people involved, other governmental units to be consulted, and availability of the necessary information.

Sufficient time should be alloted for:

(a) collection of the necessary factual information
(b) gradual refinement of the problems and issues and the alternative solutions and strategies for development
(c) desires and development of broad citizen support
(d) identification and resolution of possible conflicts with plans of affected governmental units.

2. **REGIONAL, STATE AND FEDERAL PLAN CONFORMANCE**

It is expected that regional, state and federal agency plans will conform to the comprehensive plans of cities and counties. Cities and counties are expected to take into account the regional, state and national needs. Regional, state and federal agencies are expected to make their needs known during the preparation and revision of city and county comprehensive plans. During the preparation of their plans, federal, state and regional agencies are expected to create opportunities for review and comment by cities and counties.

In the event existing plans are in conflict or an agreement cannot be reached during the plan preparation process, then the Land Conservation and Development Commission expects the affected governmental units to take steps to resolve the issues. If an agreement cannot be reached the appeals procedures in ORS Chapter 197 may be used.

3. **PLAN CONTENT**

A. **Factual Basis for the Plan**

Inventories and other forms of data are needed as the basis for the policies and other decisions set forth in the plan. This factual base should include data on the following as they relate to the goals and other provisions of the plan:

(1) Natural resources, their capabilities and limitations
(2) Man made structures and utilities, their location and condition
(3) Population and economic characteristics of the area
(4) Roles and responsibilities of governmental units

B. **Elements of the Plan**

The following elements should be included in the plan:

(1) Applicable state-wide planning goals
(2) Any critical geographic area designated by the Legislature
(3) Elements that address any special needs or desires of the people in the area
(4) Time periods of the plan, reflecting the anticipated situation at appropriate future intervals.

All of the elements should fit together and relate to one another to form a consistent whole at all times.

4. **FILING OF PLANS**

City and county plans should be filed, but not recorded, in the Office of the County Recorder. Copies of all plans should be available to the public and to affected governmental units.

5. **MAJOR REVISIONS AND MINOR CHANGES IN THE PLAN IN IMPLEMENTATION MEASURES**

The citizens in the area and any affected governmental unit should be given an opportunity to review and comment prior to any changes in the plan and implementation ordinances. There should be at least 30 days notice of the public hearing on the proposed change. In determining the affected persons to receive notice by mail of proposed changes, renters should be considered among those affected. Also, in the event that all of the property within a single ownership is not included in the area to be changed, the boundary for those to receive notice by mail should be measured from the property line and not from the boundary line of the area to be changed.

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2. LAND USE PLANNING (Continued)

When adopted, the changes should be suitably noted in a prominent place in the document, filed with the recorder, and copies made available to the public.

A **Major Revisions**
Major revisions include land use changes that have widespread and significant impact beyond the immediate area such as quantitative changes producing large volumes of traffic. A Quantitative change in the character of the land use itself such as conversion of residential to industrial use, or a spatial change that affects large areas or many different ownerships.
The plan and implementation measures should be revised when public needs and desires change and when development occurs at a different rate than contemplated by the plan. Areas experiencing rapid growth and development should provide for a frequent review so needed revisions can be made to keep the plan up to date. However, major revisions should not be made more frequently than every two years, if at all possible.
The plan and implementation measures should be reviewed at least every two years and a public statement issued on whether any revision is needed. They can be reviewed in their entirety or in major portions. The review should begin with reexamining the data and problems and continue through the same basic phases as the initial preparation of the plan and implementation measures.

B **Minor Changes**
Minor changes, i.e. those which do not have significant effect beyond the immediate area of the change, should be based on special studies or other information which will serve as the factual basis to support the change. The public need and justification for the particular change should be established. Minor changes should not be made more frequently than once a year, if at all possible.

6 **IMPLEMENTATION MEASURES**
The following types of measures should be considered for carrying out plans.

A **Management Implementation Measures**
(1) Ordinances controlling the use and construction on the land such as building codes, sign ordinances, subdivision and zoning ordinances. ORS Chapter 197 requires that the provisions of the zoning and subdivision ordinances conform to the comprehensive plan.
(2) Plans for public facilities that are more specific than those included in the comprehensive plan. They show the size, location and capacity serving each properly but are not as detailed as construction drawings.
(3) Capital improvement budget which sets out the projects to be constructed during the budget period.
(4) State and federal regulations affecting land use.
(5) Annexations, consolidations, mergers and other reorganization measures.

B **Site and Area Specific Implementation Measures**
(1) Building permits, septic tank permits, driveway permits, etc., the review of subdivisions and land partitioning applications, the changing of zones and granting of conditional uses, etc.
(2) The construction of public facilities (schools, roads, water lines, etc.).
(3) The provision of land related public services such as fire and police.
(4) The awarding of state and federal grants to local governments to provide these facilities and services.
(5) Leasing of public lands.

7 **USE OF GUIDELINES FOR THE STATE WIDE PLANNING GOALS**

Guidelines for most state wide planning goals are found in two sections — planning and implementation. Planning guidelines relate primarily to the process of developing plans that incorporate the provisions of the goals. Implementation guidelines should relate primarily to the process of carrying out the goals once they have been incorporated into the plans. Techniques to carry out the goals and plans should be considered during the preparation of the plan.

3. AGRICULTURAL LANDS

GOAL: To preserve and maintain agricultural lands.

Agricultural lands shall be preserved and maintained for farm use, consistent with existing and future needs for agricultural products, forest and open space. These lands shall be inventoried and preserved by adopting exclusive farm use zones pursuant to ORS Chapter 215. Such minimum lot sizes as are utilized for any farm use zones shall be appropriate for the continuation of the existing commercial agricultural enterprise within the area. Conversion of rural agricultural land to urbanizable land shall be based upon consideration of the following factors: (1) environmental, energy, social and economic consequences; (2) demonstrated need consistent with LCDC goals; (3) unavailability of an alternative suitable location for the requested use; (4) compatibility of the proposed use with related agricultural land; and (5) the retention of Class I, II, III and IV soils in farm use. A governing body proposing to convert rural agricultural land to urbanizable land shall follow the procedures and requirements set forth in the Land Use Planning goal (Goal 2) for goal exceptions.

AGRICULTURAL LAND — in western Oregon is land of predominantly Class I, II, III and IV soils and in eastern Oregon is land of predominantly Class I, II, III, IV, V and VI soils as identified in the Soil Capability Classification System of the United States Soil Conservation Service, and other lands which are suitable for farm use taking into consideration soil fertility; suitability for grazing; climatic conditions; existing and future availability of water for farm irrigation purposes; existing land use patterns; technological and energy inputs required; or accepted farming practices. Lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands, shall be included as agricultural land in any event.

More detailed soil data to define agricultural land may be utilized by local governments if such data permits achievement of this goal.

Farm Use — is as set forth in ORS 215.203 and includes the non-farm uses authorized by ORS 215.213.

GUIDELINES:

A **Planning**
1 Urban growth should be separated from agricultural lands by buffer or transitional areas of open space.
2 Plans providing for the preservation and maintenance of farm land for farm use, should consider as a major determinant the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources.

B **Implementation**
1 Non-farm uses permitted within farm use zones under ORS 215.213(2) and (3) should be minimized to allow for maximum agricultural productivity.
2 Extension of services, such as sewer and water supplies into rural areas, should be appropriate for the needs of agriculture, farm use and non-farm uses established under ORS 215.213.
3 Services that need to pass through agricultural lands should not be connected with any use that is not allowed under ORS 215.203 and 215.213, should not be assessed as part of the farm unit and should be limited in capacity to serve specific service areas and identified needs.
4 Forest and open space uses should be permitted on agricultural land that is being preserved for future agricultural growth. The interchange of such lands should not be subject to tax penalties.

4. FOREST LANDS

GOAL: To conserve forest lands for forest uses.

Forest land shall be retained for the production of wood fiber and other forest uses. Lands suitable for forest uses shall be inventoried and designated as forest lands. Existing forest land uses shall be protected unless proposed changes are in conformance with the comprehensive plan.

In the process of designating forest lands, comprehensive plans shall include the determination and mapping of forest site classes according to the United States Forest Service manual "Field Instructions for Integrated Forest Survey and Timber Management Inventories - Oregon, Washington and California, 1974."

Forest Lands — are (1) lands composed of existing and potential forest lands which are suitable for commercial forest uses; (2) other forested lands needed for watershed protection, wildlife and fisheries habitat and recreation; (3) lands where extreme conditions of climate, soil and topography require the maintenance of vegetative cover irrespective of use; (4) other forested lands in urban and agricultural areas which provide urban buffers, wind breaks, wildlife and fisheries habitat, livestock habitat, scenic corridors and recreational use.

Forest Uses — are (1) the production of trees and the processing of forest products, (2) open space, buffers from noise, and visual separation of conflicting uses, (3) watershed protection and wildlife and fisheries habitat, (4) soil protection from wind and water, (5) maintenance of clean air and water, (6) outdoor recreational activities and related support services and wilderness values compatible with these uses, and (7) grazing land for livestock.

GUIDELINES:

A **Planning**
1 Forest lands should be inventoried so as to provide for the preservation of such lands for forest uses.
2 Plans providing for the preservation of forest lands for forest uses should consider as a major determinant the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources.

B **Implementation:**
1 Before forest land is changed to another use, the productive capacity of the land in each use should be considered and evaluated.
2 Developments that are allowable under the forest lands classification should be limited to those activities for forest production and protection and other land management uses that are compatible with forest production. Forest lands should be available for recreation and other uses that do not hinder growth.
3 Forestation or reforestation should be encouraged on land suitable for such purposes, including marginal agricultural land not needed for farm use.
4 Road standards should be limited to the minimum width necessary for management and safety.
5 Highways through forest lands should be designed to minimize impact on such lands.
6 Rights of way should be designed so as not to preclude forest growth whenever possible.
7 Maximum utilization of utility rights of way should be required before permitting new ones.
8 Comprehensive plans should consider other land uses that are adjacent to forest lands so that conflicts with forest harvest and management are avoided.

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5. OPEN SPACES, SCENIC AND HISTORIC AREAS, AND NATURAL RESOURCES

GOAL: To conserve open space and protect natural and scenic resources.

Programs shall be provided that will: (1) insure open space, (2) protect scenic and historic areas and natural resources for future generations, and (3) promote healthy and visually attractive environments in harmony with the natural landscape character. The location, quality and quantity of the following resources shall be inventoried:

a. **Land needed or desirable for open space;**
b. **Mineral and aggregate resources;**
c. **Energy sources;**
d. **Fish and wildlife areas and habitats;**
e. **Ecologically and scientifically significant natural areas, including desert areas;**
f. **Outstanding scenic views and sites;**
g. **Water areas, wetlands, watersheds and groundwater resources;**
h. **Wilderness areas;**
i. **Historic areas, sites, structures and objects;**
j. **Cultural areas;**
k. **Potential and approved Oregon recreation trails;**
l. **Potential and approved federal wild and scenic waterways and state scenic waterways.**

Where no conflicting uses for such resources have been identified, such resources shall be managed so as to preserve their original character. Where conflicting uses have been identified the economic, social, environmental and energy consequences of the conflicting uses shall be determined and programs developed to achieve the goal.

Cultural Area — refers to an area characterized by evidence of an ethnic, religious or social group with distinctive traits, belief and social forms.

Historic Areas — are lands with sites, structures and objects that have local, regional, statewide or national historical significance.

Natural Area — includes land and water that has substantially retained its natural character and land and water that, although altered in character, is important as habitats for plant, animal or marine life, for the study of its natural historical, scentific or paleontological features, or for the appreciation of its natural features.

Open Space — consists of lands used for agricultural or forest uses, and any land area that would, if preserved and continued in its present use:

(a) Conserve and enhance natural or scenic resources;
(b) Protect air or streams or water supply;
(c) Promote conservation of soils, wetlands, beaches or tidal marshes;
(d) Conserve landscaped areas, such as public or private golf courses, that reduce air pollution and enhance the value of abutting or neighboring property;
(e) Enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries or other open space;
(f) Promote orderly urban development

Scenic Areas — are lands that are valued for their aesthetic appearance.

Wilderness Areas — are areas where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain. It is an area of undeveloped land retaining its primeval character and influence, without permanent improvement or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) may also contain ecological, geological, or other features of scientific, educational, scenic or historic value.

GUIDELINES:

A. **Planning:**

1. The need for open space in the planning area should be determined, and standards developed for the amount, distribution, and type of open space.
2. Criteria should be developed and utilized to determine what uses are consistent with open space values and to evaluate the effect of converting open space lands to inconsistent uses. The maintenance and development of open space in urban areas should be encouraged.
3. Natural resources and required sites for the generation of energy (i.e. natural gas, oil, coal, hydro, geothermal, uranium, solar and others) should be conserved and protected; reservoir sites should be identified and protected against irreversible loss.
4. Plans providing for open space, scenic and historic areas and natural resources should consider as a major determinant the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources.
5. The National Register of Historic Places and the recommendations of the State Advisory Committee on Historic Preservation should be utilized in designating historic sites.
   utilized in designating historic sites.
6. In conjunction with the inventory of mineral and aggregate resources, sites for removal and processing of such resources should be identified and protected.
7. As a general rule, plans should prohibit outdoor advertising signs except in commercial or industrial zones. Plans should not provide for the reclassification of land for the purpose of accommodating an outdoor advertising sign. The term "outdoor advertising sign" has the meaning set forth in ORS 377.710(23).

B. **Implementation:**

1. Development should be planned and directed so as to conserve the needed amount of open space.
2. The conservation of both renewable and nonrenewable natural resources and physical limitations of the land should be used as the basis for determining the quantity, quality, location, rate and type of growth in the planning area.
3. The efficient consumption of energy should be considered when utilizing natural resources.
4. Fish and wildlife areas and habitats should be protected and managed in accordance with the Oregon Wildlife Commission's fish and wildlife management plans.
5. Stream flow and water levels should be protected and managed at a level adequate for fish, wildlife, pollution abatement, recreation, aesthetics and agriculture.
6. Significant natural areas that are historically, ecologically or scientifically unique, outstanding or important, including those identified by the State Natural Area Preserves Advisory Committee, should be inventoried and evaluated. Plans should provide for the preservation of natural areas consistent with an inventory of scientific, educational, ecological and recreational needs for significant natural areas.
7. Local, regional and state governments should be encouraged to investigate and utilize fee acquisition, easements, cluster developments, preferential assessment, development rights acquisition and similar techniques to implement this goal.
8. State and federal agencies should develop statewide natural resource, open space, scenic and historic area plans and provide technical assistance to local and regional agencies. State and federal plans should be reviewed and coordinated with local and regional plans.
9. Areas identified as having nonrenewable mineral and aggregate resources should be planned for interim, transitional and "second use" utilization as well as for the primary use.

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6. AIR, WATER AND LAND RESOURCES QUALITY

GOAL: To maintain and improve the quality of the air, water and land resources of the state.

All waste and process discharges from future development, when combined with such discharges from existing developments shall not threaten to violate, or violate applicable state or federal environmental quality statutes, rules and standards. With respect to the air, water and land resources of the applicable air sheds and river basins described or included in state environmental quality statutes, rules, standards, and implementation plan, such discharges shall not (1) exceed the carrying capacity of such resources, considering long range needs; (2) degrade such resources; or (3) threaten the availability of such resources.

Waste and Process Discharges — refers to solid waste, thermal, noise, atmospheric or water pollutants, contaminants, or products therefrom. Included here also are indirect sources of air pollution which result in emissions of air contaminants for which the state has established standards.

GUIDELINES:

A. **Planning:**

1. Plans should designate alternative areas suitable for use in controlling pollution including but not limited to waste water treatment plants, solid waste disposal sites and sludge disposal sites.
2. Plans should designate areas for uban and rural residential use only where approved sewage disposal alternatives have been clearly identified in such plans.
3. Plans should buffer and separate those land uses which create or lead to conflicting requirements and impacts upon the air, water and land resources.
4. Plans which provide for the maintenance and improvement of air, land and water resources of the planning area should consider as a major determinant the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources.
5. All plans and programs affecting waste and process discharges should be coordinated within the applicable air sheds and river basins described or included in state environmental quality statutes, rules, standards and implementation plan.
6. Plans of state agencies before they are adopted, should be coordinated with and reviewed by local agencies with respect to the impact of these plans on the air, water and land resources in the planning area.
7. In all air quality maintenance areas, plans should be based on applicable state rules for reducing indirect pollution and be sufficiently comprehensive to include major transportation, industrial, institutional, commercial, recreational and governmental developments and facilities.

B. **Implementation:**

1. Plans should take into account methods and devices for implementing this goal, including but not limited to the following: (1) tax incentives and disincentives, (2) land use controls and ordinances, (3) multiple-use and joint development practices, (4) capital facility programming, (5) fee and less than fee acquisition techniques, and (6) enforcement of local health and safety ordinances.
2. A management program that details the respective implementation roles and responsibilities for carrying out this goal in the planning area should be established in the comprehensive plan.
3. Programs should manage land conservation and development activities in a manner that accurately reflects the community's desires for a quality environment and a healthy economy and is consistent with state environmental quality statutes, rules, standards and implementation plan.

7. AREAS SUBJECT TO NATURAL DISASTERS AND HAZARDS

GOAL: To protect life and property from natural disasters and hazards.

Developments subject to damage or that could result in loss of life shall not be planned nor located in known areas of natural disasters and hazards without appropriate safeguards. Plans shall be based on an inventory of known areas of natural disaster and hazard.

Areas of Natural Disaster and Hazards — are areas that are subject to natural events that are known to result in death or endanger the works of man, such as stream flooding, ocean flooding, ground water, erosion and deposition, landslides, earthquakes, weak foundation soils and other hazards unique to local or regional areas.

GUIDELINES:

A. **Planning:**

1. Areas subject to natural hazards should be evaluated as to the degree of hazard present. Proposed developments should be keyed to the degree of hazard and to the limitations on use imposed by such hazard in the planning areas.
2. In planning for flood plain areas, uses that will not require protection through dams, dikes and levies should be preferred over uses that will require such protection.
3. Low density and open space uses that are least subject to loss of life or property damage such as open storage, forestry, agriculture and recreation should be preferred in floodplains, especially the floodway portion. The floodway portion should be given special attention to avoid development that is likely to cause an impediment to the flow of floodwaters.
4. Plans taking into account known areas of natural disasters and hazards should consider as a major determinant, the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources.
5. Planning for known areas of natural disasters and hazards should include an evaluation of the beneficial impact on natural resources and the environment from letting such events naturally reoccur.

B. **Implementation:**

1. Cities and counties not already eligible should qualify for inclusion in the National Flood Insurance Program, provided under the National Flood Insurance Act of 1968 (Public Law 90-448). The Act requires that development in flood-prone areas be appropriate to the probability of flood damage, and the danger to human life. The Flood Disaster Protection Act of 1973 (P.L. 93-234) and other pertinent federal and state programs should be considered. The United States Department of Housing and Urban Development should identify all flood and mud-slide prone cities and counties in Oregon, and priority should be given to the completion of flood rate maps for such areas.
2. When locating developments in areas of known natural hazards, the density or intensity of the development should be limited by the degree of the natural hazard.
3. When regulatory programs and engineering projects are being considered, the impacts of each should be considered.
4. Natural hazards that could result from new developments, such as runoff from paving projects and soil slippage due to weak foundation soils, should be considered, evaluated and provided for.

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8. RECREATIONAL NEEDS

GOAL: To satisfy the recreational needs of the citizens of the state and visitors.

The requirements for meeting such needs, now and in the future shall be planned for by governmental agencies having responsibility for recreation areas, facilities and opportunities: (1) in coordination with private enterprise, (2) in appropriate proportions and (3) in such quantity, quality and location as is consistent with the availability of the resources to meet such requirements. State and federal agency recreation plans shall be coordinated with local and regional recreational needs and plans.

Recreation Areas, Facilities and Opportunities — provide for human development and enrichment, and include but are not limited to: open space and scenic landscapes; recreational lands; history, archaeology and natural science resources; scenic roads and travelways; sports and cultural events; camping; picnicking and recreational lodging; tourist facilities and accommodations; trails; waterway use facilities; hunting; angling; winter sports; mineral resources; active and passive games and activities.

Recreation Needs — refers to existing and future demand by citizens and visitors for recreation areas, facilities and opportunities.

GUIDELINES:

A. **Planning:**

1. An inventory of recreation needs in the planning area should be made based upon adequate research and analysis of public wants and desires.
2. An inventory of recreation opportunities should be made based upon adequate research and analysis of the resources in the planning area which are available to meet recreation needs.
3. Recreation land use to meet recreational needs and development standards, roles and responsibilities should be developed by all agencies in coordination with each other and with the private interests. Long range plans and action programs to meet recreational needs should be developed by each agency responsible for developing comprehensive plans.
4. The planning for lands and resources capable of accommodating multiple uses should include provision for appropriate recreation opportunities.
5. The STATE COMPREHENSIVE OUTDOOR RECREATION PLAN could be used as a guide when planning, acquiring and developing recreation resources, areas and facilities.
6. When developing recreation plans, energy consequences should be considered, and to the greatest extent possible non-motorized types of recreational activities should be preferred over motorized activities.
7. Planning and provision for recreation facilities and opportunities should give priority to areas, facilities and uses that (a) meet recreational needs requirements for high density population centers, (b) meet recreational needs of persons of limited mobility and finances, (c) meet recreational needs requirements while providing the maximum conservation of energy both in the transportation of persons to the facility or area and in the recreational use itself, (d) minimize environmental deterioration, (e) are available to the public at nominal cost, and (f) meet needs of visitors to the state.
8. Unique areas or resources capable of meeting one or more specific recreational needs requirements should be inventoried and protected or acquired.
9. All state and federal agencies developing recreation plans should allow for review of recreation plans by affected local agencies.
10. Comprehensive plans should be designed to give a higher priority to enhancing recreation opportunities on the public waters and shorelands of the state especially on existing and potential state and federal wild and scenic waterways and Oregon Recreational Trails.
11. Plans which provide for satisfying the recreation needs of persons in the planning area should consider as a major determinant, the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources.

B. **Implementation:**

1. Plans should take into account various techniques in addition to fee acquisition such as easements, cluster developments, preferential assessments, development rights acquisition, subdivision park land dedication which benefits the subdivision, and similar techniques to meet recreation requirements through tax policies, land leases, and similar programs.

9. ECONOMY OF THE STATE

GOAL: To diversify and improve the economy of the state.

Both state and federal economic plans and policies shall be coordinated by the state with local and regional needs. Plans and policies shall contribute to a stable and healthy economy in all regions of the state. Plans shall be based on inventories of areas suitable for increased economic growth and activity after taking into consideration the health of the current economic base; materials and energy availability; labor market factors; transportation; current market forces; availability of renewable and non-renewable resources; availability of land; and pollution control requirements.

Economic growth and activity in accordance with such plans shall be encouraged in areas that have underutilized human and natural resource capabilities and want increased growth and activity. Alternative sites suitable for economic growth and expansion shall be designated in such plans.

Diversify — refers to increasing the variety, type, scale and location of business, industrial and commercial activities.

Improve the Economy of the State — refers to a beneficial change in those business, industrial and commercial activities which generate employment, products and services consistent with the availability of long term human and natural resources.

Areas Which Have Underutilized Human and Natural Resource Capabilities — refer to cities, counties or regions which are characterized by chronic unemployment or a narrow economic base, but have the capacity and resources to support additional economic activity.

GUIDELINES:

A. **Planning:**

1. A principal determinant in planning for major industrial and commercial developments should be the comparative advantage of the region within which the developments would be located. Comparative advantage industries are those economic activities which represent the most efficient use of resources, relative to other geographic areas.
2. The economic development projections and the comprehensive plan which is drawn from the projections should take into account the availability of the necessary natural resources to support the expanded industrial development and associated populations. The plan should also take into account the social, environmental, energy and economic impacts upon the resident population.
3. Plans should designate the type and level of public facilities and services appropriate to support the degree of economic development being proposed.
4. Plans should strongly emphasize the expansion of and increased productivity from existing industries and firms as a means to strengthen local and regional economic development.
5. Plans directed toward diversification and improvement of the economy of the planning area should consider as a major determinant, the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources.

B. **Implementation:**

1. Plans should take into account methods and devices for overcoming certain regional conditions and deficiencies for implementing this goal, including but not limited to (1) tax incentives and disincentives; (2) land use controls and ordinances; (3) preferential assessments; (4) capital improvement programming; and (5) fee and less-than-fee acquisition techniques.
2. Plans should provide for a detailed management program to assign respective implementation roles and responsibilities to those private and governmental bodies which operate in the planning area and have interests in carrying out this goal and in supporting and coordinating regional and local economic plans and programs.

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10. HOUSING

GOAL: To provide for the housing needs of citizens of the state.

Buildable lands for residential use shall be inventoried and plans shall encourage the availability of adequate numbers of housing units at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location, type and density.

Buildable Lands — refers to lands in urban and urbanizable areas that are suitable, available and necessary for residential use.

Household — refers to one or more persons occupying a single housing unit.

GUIDELINES:

A. **Planning:**

1. In addition to inventories of buildable lands, housing elements of a comprehensive plan should, at a minimum, include: (1) A comparison of the distribution of the existing population by income with the distribution of available housing units by cost; (2) a determination of vacancy rates, both overall and at varying rent ranges and cost levels; (3) a determination of expected housing demand at varying rent ranges and cost levels; (4) allowance for a variety of densities and types of residences in each community; and (5) an inventory of sound housing in urban areas including units capable of being rehabilitated.
2. Plans should be developed in a manner that insures the provision of appropriate types and amounts of land within urban growth boundaries. Such land should be necessary and suitable for housing that meets the housing needs of households of all income levels.
3. Plans should provide for the appropriate type, location and phasing of public facilities and services sufficient to support housing development in areas presently developed or undergoing development or redevelopment.
4. Plans providing for housing needs should consider as a major determinant the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources.

B. **Implementation:**

1. Plans should provide for a continuing review of housing need projections and should establish a process for accommodating needed revisions.
2. Plans should take into account the effects of utilizing financial incentives and resources to (a) stimulate the rehabilitation of substandard housing without regard to the financial capacity of the owner so long as benefits accrue to the occupants; and (b) bring into compliance with codes adopted to assure safe and sanitary housing the dwellings of individuals who cannot on their own afford to meet such codes.
3. Decisions on housing development proposals should be expedited when such proposals are in accordance with zoning ordinances and with provisions of comprehensive plans.
4. Ordinances and incentives should be used to increase population densities in urban areas taking into consideration (1) key facilities, (2) the economic, environmental, social and energy consequences of the proposed densities and (3) the optimal use of existing urban land particularly in sections containing significant amounts of unsound substandard structures.
5. Additional methods and devices for achieving this goal should, after consideration of the impact on lower income households, include, but not be limited to: (1) tax incentives and disincentives; (2) building and construction code revision; (3) zoning and land use controls; (4) subsidies and loans; (5) fee and less than fee acquisition techniques; (6) enforcement of local health and safety codes; and (7) coordination of the development of urban facilities and services to disperse low income housing throughout the planning area.
6. Plans should provide for a detailed management program to assign respective implementation roles and responsibilities to those governmental bodies operating in the planning area and having interests in carrying out the goal.

11. PUBLIC FACILITIES AND SERVICES

GOAL: To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

Urban and rural development shall be guided and supported by types and levels of urban and rural public facilities and services appropriate for, but limited to, the needs and requirements of the urban, urbanizable and rural areas to be served. A provision for key facilities shall be included in each plan. To meet current and long-range needs, a provision for solid waste disposal sites, including sites for inert waste, shall be included in each plan.

A Timely Orderly and Efficient Arrangement — refers to a system or plan that coordinates the type, location and delivery of public facilities and services in a manner that best supports the existing and proposed land uses.

Rural Facilities and Services — refers to facilities and services which the governing body determines to be suitable and appropriate solely for the needs of rural use.

Urban Facilities and Services — refers to key facilities and to appropriate types and levels of at least the following: police protection; fire protection; sanitary facilities; storm drainage facilities; planning; zoning and subdivision control; health services; recreation facilities and services; energy and communication services; and community governmental services.

GUIDELINES:

A. **Planning:**

1. Plans providing for public facilities and services should be coordinated with plans for designation of urban boundaries, urbanizable land, rural uses and for the transition of rural land to urban uses.
2. Public facilities and services for rural areas should be provided at levels appropriate for rural use only and should not support urban uses.
3. Public facilities and services in urban areas should be provided at levels necessary and suitable for urban uses.
4. Public facilities and services in urbanizable areas should be provided at levels necessary and suitable for existing uses. The provision for future public facilities and services in these areas should be based upon: (1) the time required to provide the service; (2) reliability of service; (3) financial cost; and (4) levels of service needed and desired.
5. A public facility or service should not be provided in an urbanizable area unless there is provision for the coordinated development of all the other urban facilities and services appropriate to that area.
6. All utility lines and facilities should be located on or adjacent to existing public or private rights-of-way to avoid dividing existing farm units.
7. Plans providing for public facilities and services should consider as a major determinant and carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources.

B. **Implementation:**

1. Capital improvement programming and budgeting should be utilized to achieve desired types and levels of public facilities and services in urban, urbanizable and rural areas.
2. Public facilities and services should be appropriate to support sufficient amounts of land to maintain an adequate housing market in areas undergoing development or redevelopment.
3. The level of key facilities that can be provided should be considered as a principal factor in planning for various densities and types of urban and rural land uses.
4. Plans should designate sites of power generation facilities and the location of electric transmission lines in areas intended to support desired levels of urban and rural development.
5. Additional methods and devices for achieving desired types and levels of public facilities and services should include but not be limited to the following: (1) tax incentives and disincentives; (2) land use controls and ordinances; (3) multiple use and joint development practices; (4) fee and less than fee acquisition techniques; and (5) enforcement of local health and safety codes.
6. Plans should provide for a detailed management program to assign respective implementation roles and responsibilities to those governmental bodies operating in the planning area and having interests in carrying out the goal.

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12. TRANSPORTATION

GOAL: To provide and encourage a safe, convenient and economic transportation system.

A transportation plan shall (1) consider all modes of transportation including mass transit, air, water, pipeline, rail, highway, bicycle and pedestrian; (2) be based upon an inventory of local, regional and state transportation needs; (3) consider the differences in social consequences that would result from utilizing differing combinations of transportation modes; (4) avoid principal reliance upon any one mode of transportation; (5) minimize adverse social, economic and environmental impacts and costs; (6) conserve energy; (7) meet the needs of the transportation disadvantaged by improving transportation services; (8) facilitate the flow of goods and services so as to strengthen the local and regional economy; and (9) conform with local and regional comprehensive land use plans. Each plan shall include a provision for transportation as a key facility.

Transportation — refers to the movement of people and goods.
Transportation Facility — refers to one or more transportation facilities that are planned, developed, operated and maintained in a coordinated manner to supply continuity of movement between modes, and within and between geographic and jurisdictional areas.
Mass Transit — refers to any form of passenger transportation which carries members of the public on a regular and continuing basis.
Transportation Disadvantaged — refers to those individuals who have difficulty in obtaining transportation because of their age, income, physical or mental disability.

GUIDELINES:

A. **Planning:**

1. All current area-wide transportation studies and plans should be revised in coordination with local and regional comprehensive plans and submitted to local and regional agencies for review and approval.
2. Transportation systems, to the fullest extent possible, should be planned to utilize existing facilities and rights-of-way within the state provided that such use is not inconsistent with the environmental, energy, land-use, economic or social policies of the state.
3. No major transportation facility should be planned or developed outside urban boundaries on Class I and II agricultural land, as defined by the U.S. Soil Conservation Service unless no feasible alternative exists.
4. Major transportation facilities should avoid dividing existing economic farm units and urban social units unless no feasible alternative exists.
5. Populations densities and peak hour travel patterns of existing and planned developments should be considered in the choice of transportation modes for trips taken by persons. While high density developments with concentrated trip origins and destinations should be designed to be principally served by mass transit, low-density developments with dispersed origins and destinations should be principally served by the auto.
6. Plans providing for a transportation system should consider as a major determinant the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources.

B. **Implementation:**

1. The number and location of major transportation facilities should conform to applicable state or local land use plans and policies designed to direct urban expansion to areas identified as necessary and suitable for urban development. The planning and development of transportation facilities in rural areas should discourage urban growth while providing transportation service necessary to sustain rural and recreational uses in those areas so designated in the comprehensive plan.

2. Plans for new or for the improvement of major transportation facilities should identify the positive and negative impacts on: (1) local land use patterns, (2) environmental quality, (3) energy use and resources, (4) existing transportation systems and (5) fiscal resources in a manner sufficient to enable local governments to rationally consider the issues posed by the construction and operation of such facilities.

3. Lands adjacent to major mass transit stations, freeway interchanges, and other major air, land and water terminals should be managed and controlled so as to be consistent with and supportive of the land use and development patterns identified in the comprehensive plan of the jurisdiction within which the facilities are located.

4. Plans should provide for a detailed management program to assign respective implementation roles and responsibilities to those governmental bodies operating in the planning area and having interests in carrying out the goal.

13. ENERGY CONSERVATION

GOAL: To conserve energy.
Land and uses developed on the land shall be managed and controlled so as to maximize the conservation of all forms of energy, based upon sound economic principles.

GUIDELINES:

A. **Planning:**

1. Priority consideration in land use planning should be given to methods of analysis and implementation measures that will assure achievement of maximum efficiency in energy utilization.
2. The allocation of land and uses permitted on the land should seek to minimize the depletion of nonrenewable sources of energy.
3. Land use planning should, to the maximum extent possible, seek to recycle and re-use vacant land and those uses which are not energy efficient.

4. Land use planning should, to the maximum extent possible, combine increasing density gradients along high capacity transportation corridors to achieve greater energy efficiency.

5. Plans directed toward energy conservation within the planning area should consider as a major determinant the existing and potential capacity of the renewable energy sources to yield useful energy output. Renewable energy sources include water, sunshine, wind, geothermal heat and municipal, forest and farm waste. Whenever possible, land conservation and development actions provided for under such plans should utilize renewable energy sources.

B. **Implementation:**

1. Land use plans should be based on utilization of the following techniques and implementation devices which can have a material impact on energy efficiency:

   a. Lot size, dimension and siting controls;
   b. Building height, bulk and surface area;
   c. Density of uses, particularly those which relate to housing densities;
   d. Availability of light, wind and air;
   e. Compatibility of and competition between competing land use activities; and
   f. Systems and incentives for the collection, reuse and recycling of metallic and nonmetallic waste.

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14. URBANIZATION

GOAL: To provide for an orderly and efficient transition from rural to urban land use.

Urban growth boundaries shall be established to identify and separate urbanizable land from rural land.

Establishment and change of the boundaries shall be based upon consideration of the following factors:

(1) Demonstrated need to accommodate long-range urban population growth requirements consistent with LCDC goals;
(2) Need for housing, employment opportunities, and livability;
(3) Orderly and economic provision for public facilities and services;
(4) Maximum efficiency of land uses within and on the fringe of the existing urban area;
(5) Environmental, energy, economic and social consequences;
(6) Retention of agricultural land as defined, with Class I being the highest priority for retention and Class VI the lowest priority; and,
(7) Compatibility of the proposed urban uses with nearby agricultural activities.

The results of the above considerations shall be included in the comprehensive plan. In the case of a change of a boundary, a governing body proposing such change in the boundary separating urbanizable land from rural land, shall follow the procedures and requirements as set forth in the Land Use Planning Goal (Goal 2) for goal exceptions.

Any urban growth boundary established prior to January 1, 1975 which includes rural lands that have not been built upon shall be reviewed by the governing body, utilizing the same factors applicable to the establishment or change of urban growth boundaries.

Establishment and change of the boundaries shall be a cooperative process between a city and the county or counties that surround it.

Land within the boundaries separating urbanizable land from rural land shall be considered available over time for urban uses. Conversion of urbanizable land to urban uses shall be based on consideration of:

(1) Orderly, economic provision for public facilities and services;
(2) Availability of sufficient land for the various uses to insure choices in the market place;
(3) LCDC goals; and,
(4) Encouragement of development within urban areas before conversion of urbanizable areas.

GUIDELINES:

A. **Planning:**

1. Plans should designate sufficient amounts of urbanizable land to accommodate the need for further urban expansion, taking into account (1) the growth policy of the area, (2) population needs (by the year 2000), (3) the carrying capacity of the planning area, and (4) open space and recreational needs.
2. The size of the parcels of urbanizable land that are converted to urban land should be of adequate dimension so as to maximize the utility of the land resource and enable the logical and efficient extension of services to such parcels.
3. Plans providing for the transition from rural to urban land use should take into consideration as a major determinant the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources.

B. **Implementation Related:**

1. The type, location and phasing of public facilities and services are factors which should be utilized to direct urban expansion.
2. The type, design, phasing and location of major public transportation facilities (i.e., all modes: air, marine, rail, mass transit, highways, bicycle and pedestrian) and improvements thereto are factors which should be utilized to support urban expansion into urbanizable areas and restrict it from rural areas.
3. Financial incentives should be provided to assist in maintaining the use and character of lands adjacent to urbanizable areas.
4. Local land use controls and ordinances should be mutually supporting, adopted and enforced to integrate the type, timing and location of public facilities and services in a manner to accommodate increased public demands as urbanizable lands become more urbanized.
5. Additional methods and devices for guiding urban land use should include but not be limited to the following: (1) tax incentives and disincentives; (2) multiple use and joint development practices; (3) fee and less-than-fee acquisition techniques; and (4) capital improvement programming.
6. Plans should provide for a detailed management program to assign respective implementation roles and responsibilities to those governmental bodies operating in the planning area and having interests in carrying out the goal.

15. WILLAMETTE RIVER GREENWAY

The Willamette River Greenway presents a unique and unprecedented problem. The outlines of the problem are (1) a legislative policy directing development and maintenance of a natural, scenic, historical and recreational greenway along the Willamette River; (2) accomplishment of this purpose by the development and implementation of a "plan" (3) through the "cooperative efforts" of the state and local units of government. ORS 390.314(1) and (2)(a). Except for this broad directive, there is no specific legislative guidance as to how this undertaking is to be accomplished for what amounts to over 600 miles of riverbank. The legislature did direct the Oregon Department of Transportation (DOT) to prepare a plan "for the development and management of the Willamette River Greenway" (ORS 390.318(1)). However, the detail as to what was to go into the plan is sketchy. The legislature required the setting forth of the boundaries of the Greenway, interests to be acquired by units of governments, the location of publicly owned property and the locations of aggregate deposits. (ORS 390.318(2) and (3). The legislature also directed the Land Conservation and Development Commission (LCDC), following preparation of the Plan by DOT, to make such investigation and review of the plan "as it considers necessary" and to "revise the plan . . . itself or require such revision by the Department and units of local government" (ORS 390.322(1)). Again, however, the question of how the Greenway was to come about through the cooperative efforts of the various units of government was not spelled out.

The situation therefore calls for some overall management framework within which the various public agencies can act to accomplish the legislative intent.

Accordingly, the LCDC deems a statewide planning goal to be necessary not only to implement the policy of the Greenway Law, but also to provide the parameters within which the DOT plan can be formulated and carried out for the Greenway. Within those parameters local governments can formulate and implement (in a manner in harmony with the DOT plan), those Greenway portions of their comprehensive plans and implementing ordinances within their boundaries.

OVERALL GOAL STATEMENT

To protect, conserve, enhance and maintain the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River as the Willamette River Greenway.

A. **GENERAL**

1. The qualities of the Willamette River Greenway shall be protected, conserved, enhanced and maintained consistent with the lawful uses present on December 6, 1975. Intensification of uses, changes in use or developments may be permitted after this date only when they are consistent with the Willamette Greenway Statute, this goal, the interim goals in ORS 215.515(1) and the statewide planning goals, as the case may be, and when such changes have been approved as provided in the Preliminary Greenway Plan or similar provisions in the completed plan as appropriate.
2. The Willamette Greenway Program shall be composed of cooperative local and state government plans for the protection, conservation, enhancement and maintenance of the Greenway, and of implementation measures including management through ordinances, rules, regulations, permits, grants as well as acquisition and development of property, etc. It shall also become a part of all other local and state plans and programs within and near the Greenway.
3. The Greenway Program shall include:

   a. Boundaries within which special Greenway considerations shall be taken into account;
   b. Management of uses on lands within and near the Greenway to maintain the qualities of the Greenway;

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15. WILLAMETTE RIVER GREENWAY (Continued)

1. The boundaries of the Willamette River Greenway;
2. The boundaries of the areas in which interests in property may be acquired. These shall be depicted clearly on maps or photographs together with the nature of the acquisition such as fee title or scenic easement; the general public purposes of each such area, and the conditions under which such acquisition may occur;
3. Use Intensity Classifications for the areas acquired by the State for Greenway purposes; and
4. The locations of public access, either already existing or to be acquired.

The DOT plan or revision thereto will be reviewed by the Land Conservation and Development Commission (LCDC) as provided in ORS 390.322. When the Commission has determined that the revision is consistent with the statutes and this Goal, it shall approve the plan for recording.

E. COMPREHENSIVE PLANS OF CITIES AND COUNTIES

Each city and county in which the Willamette River Greenway is located, shall incorporate the portions of the approved DOT Greenway Plan in its comprehensive plan and implementing ordinances and other implementation measures.

1. Boundaries: Boundaries of the approved Willamette River Greenway shall be shown on every comprehensive plan.
2. Uses: Each comprehensive plan shall designate the uses to be permitted for the rural and urban areas of each jurisdiction which uses shall be consistent with the approved DOT Greenway Plan, the Greenway Statutes and this Goal.
3. Acquisition Areas: Each comprehensive plan shall designate areas identified for possible public acquisition and the conditions under which such acquisition may occur as set forth in the approved DOT Willamette Greenway Plan and any other area which the city or county intends to acquire.

F. IMPLEMENTATION MEASURES

Implementation of the Greenway Program shall occur through the cooperative efforts of state and local units of government and shall be consistent with the approved DOT Greenway Plan and the city and county comprehensive plans, the goals and appropriate statutes.

1. Boundaries: Willamette River Greenway boundaries shall be shown on city and county zoning maps and referred to in the zoning ordinance and the subdivision ordinance.
2. Uses: Measures for managing uses within the Greenway shall include at least:
   a. Exclusive farm use zoning of all agricultural land within and adjacent to the Greenway;
   b. Flood plain zoning of all areas subject to flooding;
   c. Open space zoning (see ORS Chapter 308.740) of all open space areas; and
   d. Provisions for the use management considerations and requirements set forth in C3. of this Goal.
3. Greenway Compatibility Review: Cities and counties shall establish provisions by ordinance for the review of intensifications, changes of use or developments to insure their compatibility with the Willamette River Greenway. Such ordinances shall include the matters in a through e below:
   a. The establishment of Greenway compatibility review boundaries adjacent to the river within which review of developments shall take place. Such boundaries in urban areas shall be not less than 150 feet from the ordinary low water line of the Willamette River; in rural areas such boundaries shall include all lands within the boundaries of the Willamette River Greenway;
   b. The review of intensification, changes of use and developments as authorized by the Comprehensive Plan and zoning ordinance to insure their compatibility with the Greenway statutes and to insure that the best possible appearance, landscaping and public access are provided. Such review shall include the following findings, that to the greatest possible degree:
      (1) The intensification, change of use or development will provide the maximum possible landscaped area, open space or vegetation between the activity and the river;
      (2) Necessary public access will be provided to and along the river by appropriate legal means;
   c. Provision is made for at least one public hearing on each application to allow any interested person an opportunity to speak;
   d. Provision is made for giving notice of such hearing at least to owners of record of contiguous property and to any individual or groups requesting notice; and
   e. Provision is made to allow the imposing of conditions on the permit to carry out the purpose and intent of the Willamette River Greenway Statutes.
   f. As an alternative to the review procedures in subparagraphs 3 (a) to 3 (e), a city or county governing body may prepare and adopt, after public hearing and notice thereof to DOT, a design plan and administrative review procedure for a portion of the Greenway. Such design plan must provide for findings equivalent to those required in subparagraph 3 (b) (1) and (2) of paragraph F so as to insure compatibility with the Greenway of proposed intensifications, changes of use or developments. If this alternative procedure is adopted and approved by DOT and LCDC, a hearing will not be required on each individual application.

G. NOTICE OF PROPOSED INTENSIFICATION, CHANGE OF USE OR DEVELOPMENT

Government agencies, including cities, counties, state agencies, federal agencies, special districts, etc., shall not authorize or allow intensification, change of use or development on lands within the boundaries of the Willamette River Greenway compatibility review area established by cities and counties as required by paragraph F 3. a. without first giving written notice to the DOT by immediately forwarding a copy of any application by certified mail — return receipt requested. Notice of the action taken by federal, state, city, county, and special districts on an application shall be furnished to DOT.

H. AGENCY JURISTICTION

Nothing in this order is intended to interfere with the duties, powers and responsibilities vested by statute in agencies to control or regulate activities on lands or waters within the boundaries of the Greenway so long as the exercise of the authority is consistent with the legislative policy set forth in ORS 390.310 to 390.368 and the applicable statewide planning goal for the Willamette River Greenway, as the case may be. An agency receiving an application for a permit to conduct an activity on lands or waters within the Greenway shall immediately forward a copy of such request to the Department of Transporataion.

I. DOT SCENIC EASEMENTS

Nothing in this Goal is intended to alter the authority of DOT to acquire property or a scenic easement therein as set forth in ORS 390.310 to 390.368.

J. TRESPASS BY PUBLIC

Nothing in this Goal is intended to authorize public use of private property. Public use of private property is a trespass unless appropriate easements and access have been acquired in allowance with law to authorize such use.

K. DEFINITIONS FOR WILLAMETTE RIVER GREENWAY GOAL

1. CHANGE OF USE means making a different use of the land or water than that which existed on December 6, 1975. It includes a change which requires construction, alterations of the land, water or other areas outside of the existing buildings or structures and which substantially alters or affects the land or water. It does not include a change of use of a building or other structure which does not substantially alter or affect the land or water upon which it is situated. Change of use shall not include the completion of a structure for which a valid permit had been issued as of December 6, 1975 and under which permit substantial construction has been undertaken by July 1, 1976. The sale of property is not in itself considered to be a change of use. An existing open storage area shall be considered to be the same building.

   Landscaping, construction of driveways, modifications of existing structures, or the construction or placement of such subsidiary structures or facilities as are usual and necessary to the use and enjoyment of existing improvements shall not be considered a change of use for the purposes of this Goal.
2. LANDS COMMITTED TO URBAN USE means those lands upon which the economic, developmental and locational factors have, when considered together, made the use of the property for other than urban purposes inappropriate. Economic, developmental and locational factors include such matters as ports, industrial, commercial, residential or recreational uses of property, the effect these existing uses have on properties in their vicinity, previous public decisions regarding the land in question, as contained in ordinances and such plans as the Lower Willamette River Management Plan, the city or county comprehensive plans and similar public actions.
3. INTENSIFICATION means any additions which increase or expand the area or amount of an existing use, or the level of activity. Remodeling of the exterior of a structure not excluded

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15. WILLAMETTE RIVER GREENWAY (Continued)

c. Acquisition of lands or interests in lands from a donor or willing seller or as otherwise provided by law in areas where the public's need can be met by public ownership.

B. **INVENTORIES AND DATA**

Information and data shall be collected to determine the nature and extent of the resources, uses and rights associated directly with the Willamette River Greenway. These inventories are for the purpose of determining which lands are suitable or necessary for inclusion within the Willamette River Greenway boundaries and to develop the plans and management and acquisition programs.

Each of the following items shall be inventoried[1] as it relates to the Greenway objectives:

1. All agricultural lands as provided in Goal 3. This includes all land currently in farm use as defined in ORS Chapter 215.203(2);
2. All current aggregate excavation and processing sites, and all known extractable aggregate sources;
3. All current public recreation sites, including public access points to the river and hunting and fishing areas;
4. Historical and archaeological sites;
5. Timber resources;
6. Significant natural and scenic areas, and vegetative cover;
7. Fish and wildlife habitats;
8. Areas of annual flooding and flood plains;
9. Land currently committed to industrial, commercial and residential uses;
10. The ownership of property, including riparian rights;
11. Hydrological conditions;
12. Ecologically fragile areas;
13. Recreational needs as set forth in Goal 8;
14. Other uses of land and water in or near the Greenway;
15. Acquisition areas which include the identification of areas suitable for protection or preservation through public acquisition of lands or an interest in land. Such acquisition areas shall include the following:
    a. Areas which may suitably be protected by scenic easements;
    b. Scenic and recreational land for exclusive use of the public;
    c. Sites for the preservation and restoration of historic places;
    d. Public access corridors;
    e. Public parks;
    f. Ecologically fragile areas; and
    g. Other areas which are desirable for public acquisition may also be identified if the reasons for public acquisition for the Greenway are also identified.

C. **CONSIDERATIONS AND REQUIREMENTS**

The Oregon Department of Transportation (DOT) Greenway Plan, the portions of each city and county comprehensive plan within the Greenway, the portions of plans and programs and implementation measures of all special districts, state and federal agencies within the Greenway shall be based on the following factors:

1. General Considerations and Requirements.
    a. Statutory requirements in ORS Chapter 390.010 to 390.220 and in ORS Chapter 390.310 to 390.368;
    b. City, county and regional comprehensive plans adopted pursuant to ORS Chapter 197 for jurisdictions along the river;
    c. Statewide planning goals and guidelines adopted pursuant to ORS Chapter 197 by LCDC;
    d. Interim goals set forth in ORS Chapter 215.515(1).
2. Boundary Considerations and Requirements.[2] The temporary and preliminary Greenway boundaries shall be reviewed as to their appropriateness and refined as needed based on the information contained in the inventories. The refined boundaries shall include such lands along the Willamette River as are necessary to carry out the purpose and intent of the Willamette River Greenway through a coordinated management and acquisition program.

   Within farm areas, consideration shall be given to the ability of agricultural land adjacent to the Willamette River Greenway to enhance and protect the Greenway.
3. Use Management Considerations and Requirements. Plans and implementation measures shall provide for the following:
    a. Agricultural lands — The agricultural lands identified in the inventory shall be preserved and maintained as provided in Goal 3 as an effective means to carry out the purposes of the Greenway including those agricultural lands near the Greenway. Lands devoted to farm use which are not located in an exclusive farm use zone shall be allowed to continue in such farm use without restriction as provided in ORS 390.314(2)(c), ORS 390.332(4) and ORS 390.334(2);
    b. Recreation—
        (1) Local, regional and state recreational needs shall be provided for consistent with the carrying capacity of the land;
        (2) Zoning provisions shall allow recreational uses on lands to the extent that such use would not substantially interfere with the long-term capacity of the land for farm use as defined in ORS 215.203;
        (3) The possibility that public recreation use might disturb adjacent property shall be considered and minimized to the greatest extent practicable;
        (4) The public parks established by section 8a of Chapter 558, 1973 Oregon laws, shall be set forth on the appropriate comprehensive plans and zoning established which will permit their development, use and maintenance;
    c. Access — Adequate public access to the river shall be provided for, with emphasis on urban and urbanizable areas;
    d. Fish and wildlife habitat — Significant fish and wildlife habitats shall be protected;
    e. Scenic qualities and views — Identified scenic qualities and viewpoints shall be preserved;
    f. Protection and safety — The Willamette River Greenway Program shall provide for the maintenance of public safety and protection of public and private property, especially from vandalism and trespass in both rural and urban areas to the maximum extent practicable;
    g. Vegetative fringe — The natural vegetative fringe along the River shall be enhanced and protected to the maximum extent practicable;
    h. Timber resource — The partial harvest of timber shall be permitted beyond the vegetative fringes in areas not covered by a scenic easement when the harvest is consistent with an approved plan under the Forest Practices Act, or, if not covered by the Forest Practices Act, then with an approved plan under the Greenway compatibility review provisions. Such plan shall insure that the natural scenic qualities of the Greenway will be maintained to the greatest extent practicable or restored within a brief period of time;
    i. Aggregate extraction — Extraction of known aggregate deposits may be permitted when compatible with the purposes of the Willamette River Greenway and when economically feasible, subject to compliance with ORS 541.605 to 541.695, ORS 517.750 to 517.900 and subject to compliance with local regulations designed to minimize adverse effects of water quality, fish and wildlife, vegetation, bank stabilization, streamflow, visual quality, noise, safety and to guarantee necessary reclamation;
    j. Development away from river — Developments shall be directed away from the River to the greatest possible degree; provided, however, lands committed to urban uses within the Greenway shall be permitted to continue as urban uses, including port, industrial, commercial and residential uses, uses pertaining to navigational requirements, water and land access needs and related facilities;
    k. Greenway setback — A setback line will be established to keep structures separated from the River in order to protect, maintain, preserve and enhance the natural, scenic, historic and recreational qualities of the Willamette River Greenway, as identified in the Greenway inventories. The setback line shall not apply to water-related or water dependent uses.
4. Areas to be Acquired — Considerations and Requirements.

   Areas to be acquired must:
    a. Have potential to serve the purposes of the greenway;
    b. To the maximum extent practicable, be consistent with non-interference or non-interruption of farm uses as defined in ORS Chapter 215.203(2);
    c. Be suitable for permitting the enforcement of existing statutes relating to trespass and vandalism along the Greenway, and be suitable for allowing maintenance of the lands or interests acquired.

D. **DOT GREENWAY PLAN**

The DOT will prepare and keep current, through appropriate revisions, a Greenway Plan setting forth the state interests in the Greenway. The plan will show:

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[1] When information on such items is not available through previous studies, information will be maintained by the agencies for those portions of the plan for which they are responsible. This requirement shall not limit units of government from collecting information on other items.

[2] See ORS Chapter 390.310 (1) for specific statutory language. "There shall be included within the boundaries of the Willamette River Greenway all lands situated with 150 feet from the ordinary low water line on each side of each channel of the Willamette River and such other lands along the Willamette River as the department and units of local government consider necessary for the development of such Greenway, however, the total area included within the boundaries of such Greenway shall not exceed, on the average, 320 acres per river mile along the Willamette River; however, for the purpose of computing the maximum acreage of lands within such Greenway, the acreage of lands situated on such islands and within state parks and recreation areas shall be excluded.

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15. WILLAMETTE RIVER GREENWAY (Continued)

below is an intensification when it will substantially alter the appearance of the structure. Intensification shall not include the completion of a structure for which a valid permit was issued as of December 6, 1975 and under which permit substantial construction has been undertaken by July 1, 1976. Maintenance and repair usual and necessary for the continuance of an existing use is not an intensification of use. Reasonable emergency procedures necessary for the safety or the protection of property are not an intensification of use. Residential use of lands within the Greenway includes the practices and activities customarily related to the use and enjoyment of one's home. Landscaping, construction of driveways, modification of existing structures or construction or placement of such subsidiary structures or facilities adjacent to the residence as are usual and necessary to such use and enjoyment shall not be considered an intensification for the purposes of this Goal. Seasonal increases in gravel operations shall not be considered an intensification of use.

16. ESTUARINE RESOURCES

GOAL:

OVERALL STATEMENT

To recognize and protect the unique environmental, economic and social values of each estuary and associated wetlands; and

To protect, maintain, where appropriate develop, and where appropriate restore the long-term environmental, economic, and social values, diversity and benefits of Oregon's estuaries.

Comprehensive management programs to achieve these objectives shall be developed by appropriate local, state, and federal agencies for all estuaries.

To assure diversity among the estuaries of the State, by June 15, 1977, LCDC with the cooperation and participation of local governments, special districts, and state and federal agencies shall classify the Oregon estuaries to specify the most intensive level of development or alteration which may be allowed to occur within each estuary. After completion for all estuaries of the inventories and initial planning efforts, including identification of needs and potential conflicts among needs and goals and upon request of any coastal jurisdiction, the Commission will review the overall Oregon Estuary Classification.

Comprehensive plans and activities for each estuary shall provide for appropriate uses (including preservation) with as much diversity as is consistent with the overall Oregon Estuary Classification, as well as with the biological, economic, recreational, and aesthetic benefits of the estuary. Estuary plans and activities shall protect the estuarine ecosystem, including its natural biological productivity, habitat, diversity, unique features and water quality. Dredge, fill, or other reduction or degradation of these natural values by man shall be allowed only:

- **(1) if required for navigation or other water-dependent uses that require an estuarine location; and**
- **(2) if a public need is demonstrated; and**
- **(3) if no alternative upland locations exist; and**
- **(4) if adverse impacts are minimized as much as feasible.**

INVENTORY REQUIREMENTS

Inventories shall be conducted to provide information necessary for designating estuary uses and policies. These inventories shall provide information on the nature, location, and extent of physical, biological, social and economic resources in sufficient detail to establish a sound basis for estuarine management and to enable the identification of areas for preservation and areas of exceptional potential for development.

State and federal agencies shall assist in the inventories of estuarine resources. The Department of Land Conservation and Development, with assistance from local government, state and federal agencies, shall establish common inventory standards and techniques, so that inventory data collected by different agencies or units of government, or data between estuaries, will be comparable.

COMPREHENSIVE PLAN REQUIREMENTS

Based upon inventories, the limits imposed by the overall Oregon Estuary Classification, and needs identified in the planning process, comprehensive plans for coastal areas shall:

- **(1) identify each estuarine area;**
- **(2) describe and maintain the diversity of important and unique environmental, economic and social features within the estuary;**
- **(3) classify the estuary into management units; and**
- **(4) establish policies and use priorities for each management unit using the standards and procedures set forth below.**

Management Units

Diverse resources, values, and benefits shall be maintained by classifying the estuary into distinct water use management units. When classifying estuarine areas into management units, the following shall be considered in addition to the inventories:

- **(1) Adjacent upland characteristics and existing land uses;**
- **(2) Compatibility with adjacent uses;**
- **(3) Energy costs and benefits; and**
- **(4) The extent to which the limited water surface area of the estuary shall be committed to different surface uses.**

As a minimum, the following kinds of management units shall be established:

- **(1) Natural — In all estuaries, areas shall be designated to assure the protection of significant fish and wildlife habitats, of continued biological productivity within the estuary, and of scientific, research, and educational needs. These shall be managed to preserve the natural resources in recognition of dynamic, natural, geological and evolutionary processes. Such areas shall include, at a minimum, all major tracts of salt marsh, tideflats, and seagrass and algae beds.**

  Permissible uses in natural areas shall be undeveloped low-intensity water-dependent recreation; research and educational observation; navigational aides, such as beacons and buoys; protection of habitat, nutrient, fish, wildlife and aesthethic resources; and passive restoration measures; and where consistent with the resource capabilities of the area and the purposes of this management unit, aquaculture, communication facilities, and active restoration measures.

- **(2) Conservation — In all estuaries, except those in the overall Oregon Estuary Classification which are classed for preservation, areas shall be designated for long-term uses of renewable resources that do not require major alteration of the estuary, except for the purpose of restoration. These areas shall be managed to conserve the natural resources and benefits. These shall include areas needed for maintenance and enhancement of biological productivity, recreational and aesthetic uses, and aquaculture. They shall include tracts of significant habitat smaller or of less biological importance than those in (1) above, and oyster and clam beds. Partially altered areas or estuarine areas adjacent to existing development of moderate intensity shall also be included in this classification unless otherwise needed for preservation or development consistent with the overall Oregon Estuary Classification.**

  Permissible uses in conservation areas shall be those allowed in (1) above; active restoration measures; aquaculture; and communication facilities. Where consistent with resource capabilities of the area and the purposes of this management unit, high-intensity water-dependent recreation; maintenance dredging of existing facilities; minor navigational improvements; mining and mineral extraction; water-dependent users requiring occupation of water surface area by means other than fill; and bridge crossings, shall be appropriate.

- **(3) Development — In estuaries classified in the overall Oregon Estuary Classification for more intense development or alteration,**

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16. ESTUARINE RESOURCES (Continued)

areas shall be designated to provide for navigation and other identified needs for public, commercial, industrial water-dependent uses, consistent with the level of development or alteration allowed by the overall Oregon Estuary Classification. Such areas shall include deep-water areas adjacent or in proximity to the shoreline, navigation channels, subtidal areas for in-water disposal of dredged material and areas of minimal biological significance needed for uses requiring alteration of the estuary.

Permissible uses in areas managed for water-dependent activities shall be navigation and water-dependent commercial and industrial uses. Where consistent with the resource capabilities and the purposes of this management unit, water-related and non-dependent, non-related uses not requiring fill; mining and mineral extraction; and activities identified in (1) and (2) above, shall also be appropriate.

As appropriate, needs for the following uses shall be included:

(a) Dredge or fill, as allowed elsewhere in the goal;
(b) Navigation and water-dependent commercial enterprises and activities;
(c) Water transport channels where dredging may be necessary;
(d) Disposal of dredged material;
(e) Water storage areas where needed for products used in or resulting from industry, commerce, and recreation;
(f) Marinas;
(g) Aquaculture;
(h) Extraction of aggregate resources;
(i) Restoration.

The cumulative effect of all such uses, activities and alterations shall be considered and described during plan development and adoption. In designating areas for these uses, local governments shall consider the potential for using upland sites to reduce or limit the commitment of the estuarine surface area for surface uses.

Priority

Priorities for use of each of the management units shall be designated which maintain, promote, encourage, or enhance uses and activities compatible with the requirements of this Goal, the capability of the resources, and the objectives of the classification.

While the priorities may vary between individual management units consistent with these requirements, the general priorities (from highest to lowest) for use of estuarine resources and for designating different estuarine management units shall be:

(1) Uses which maintain the integrity of the estuarine ecosystem;
(2) Water-dependent uses requiring estuarine location, as consistent with the overall Oregon Estuarine Classification;
(3) Water-related uses which do not degrade or reduce the natural estuarine resources and values; and
(4) Non-dependent, non-related uses which do not alter, reduce or degrade the estuarine resources and values.

IMPLEMENTATION REQUIREMENTS

(1) Unless fully addressed during the development and adoption of comprehensive plans, actions which would potentially alter the integrity of the estuarine ecosystem shall be preceded by a clear presentation of the impacts of the proposed alteration, and a demonstration of the public's need and gain which warrant such modification or loss.

(2) State and federal agencies shall review, revise and implement their plans, actions and management authorities to maintain water quality and minimize man-induced sedimentation in estuaries. Local government shall recognize these authorities in managing lands rather than developing new or duplicatory management techniques or controls.

Existing programs which shall be utilized include:

(a) The Oregon Forest Practices Act and Administrative Rules, for forest lands as defined in ORS 527.610 — 527.730 and 527.990 and the Forest Lands Goal;
(b) The programs of the Soil and Water Conservation Commission and local districts and the Soil Conservation Service, for Agricultural Lands Goal;
(c) The non-point source discharge water quality program administered by the Department of Environmental Quality under Section 208 of the Federal Water Quality Act as amended in 1972 (PL 92-500); and
(d) The Fill and Removal Permit Program administered by the Division of State Lands under ORS 541.605 — 541.665.

(3) The State Water Policy Review Board, assisted by the staff of the Oregon Department of Water Resources, and the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality, the Division of State Lands, and the U. S. Geological Survey, shall consider establishing minimum fresh-water flow rates and standards so that resources and uses of the estuary, including navigation, fish and wildlife characteristics, and recreation, will be maintained.

(4) When dredge or fill activities are permitted in inter-tidal or tidal marsh areas, their effects shall be mitigated by creation or restoration of another area of similar biological potential to ensure that the integrity of the estuarine ecosystem is maintained.

(5) Local government and state and federal agencies shall develop comprehensive programs, including specific sites and procedures for disposal and stockpiling of dredge materials. These programs shall encourage the disposal of dredge material in uplands or ocean waters, and shall permit disposal in estuary waters only where such disposal will clearly be consistent with the objectives of this goal and state and federal law. Dredged material shall not be disposed in inter-tidal or tidal marsh estuarine areas unless part of an approved fill project.

(6) Local government and state and federal agencies shall act to restrict the proliferation of individual single-purpose docks and piers by encouraging community facilities common to several uses and interests. The size and shape of a dock or pier shall be limited to that required for the intended use. Alternatives to docks and piers, such as mooring buoys, dryland storage, and launching ramps shall be investigated and considered.

(7) State and federal agencies shall assist local government in identifying areas for restoration. Restoration is appropriate in areas where activities have adversely affected some aspect of the estuarine system, and where it would contribute to a greater achievement of the objective of this goal. Appropriate sites include areas of heavy erosion or sedimentation, degraded fish and wildlife habitat, anadromous fish spawning areas, abandoned diked estuarine marsh areas, and areas where water quality restricts the use of estuarine waters for fish and shellfish harvest and production, or for human recreation.

(8) State agencies with planning, permit, or review authorities affected by this goal shall review their procedures and standards to assure that the objectives and requirements of the goal are fully addressed. In estuarine areas the following authorities are of special concern:

Division of State Lands	
Fill and Removal Law	ORS 541.605 —541.665
Mineral Resources	ORS 273.551; ORS 273.775 —273.780
Submersible and Submerged Lands	ORS 274.005 —274.940
Department of Economic Development	
Ports Planning	ORS 777.835
Water Resources Department	
Appropriation of Water	ORS 537.010 —537.990 ORS 543.010 —543.620
Department of Geology and Mineral Industries	
Mineral Extraction	ORS 520.005
Oil and Gas Drilling	—520.095
Department of Forestry	
Forest Practices Act	ORS 527.610 —527.730
Department of Energy	
Regulation of thermal power and nuclear installation	ORS 469.300 —469.570
Department of Environmental Quality	
Water Quality	ORS 468.700 —468.775
Sewage Treatment & Disposal Systems	ORS 454.010 —454.755

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16. ESTUARINE RESOURCES (Continued)

GUIDELINES

The requirements of the Estuarine Resources Goal should be addressed with the same consideration applied to previously adopted goals and guidelines. The planning process described in the Land Use Planning Goal (Goal 2), including the exceptions provisions described in Goal 2, applied to estuarine areas and implementation of the Estuarine Resources Goal.

Because of the strong relationship between estuaries and adjacent coastal shorelands, the inventories and planning requirements for these resources should be closely coordinated. These inventories and plans should also be fully coordinated with the requirements in other state planning goals, especially the Goals for Open Spaces, Scenic and Historic Areas and Natural Resources; Air, Water and Land Resources Quality; Recreational Needs; Transportation; and Economy of the State.

A. Inventories

In detail appropriate to the level of development or alteration proposed, the inventories for estuarine features should include:

1. Physical characteristics
   (a) Size, shape, surface area, and contour, including water depths;
   (b) Water characteristics including, but not limited to, salinity, temperature, and dissolved oxygen. Data should reflect average and extreme values for the months of March, June, September, and December as a minimum; and
   (c) Substrate mapping showing location and extent of rock, gravel, sand, and mud.

2. Biological characteristics
   Location, Description, and Extent of:
   a. The common species of benthic (living in or on bottom) flora and fauna;
   b. The fish and wildlife species, including part-time residents;
   c. The important resting, feeding, and nesting areas for migrating and resident shorebirds, wading birds and wildfowl;
   d. The areas important for recreational fishing and hunting, including areas used for clam digging and crabbing;
   e. Estuarine wetlands;
   f. Fish and shellfish spawning areas;
   g. Significant natural areas; and
   h. Areas presently in commercial aquaculture.

3. Social and economic characteristics
   Location, Description, and Extent of:
   a. The importance of the estuary to the economy of the area;
   b. Existing land uses surrounding the estuary;
   c. Man-made alterations of the natural estuarine system;
   d. Water dependent industrial and/or commercial enterprises;
   e. Public access;
   f. Historical or archaeological sites associated with the estuary; and
   g. Existing transportation systems.

B. Historic, Unique and Scenic Waterfront Communities

Local government comprehensive plans should encourage the maintenance and enhancement of historic, unique, and scenic waterfront communities, allowing for non-water dependent uses as appropriate in keeping with such communities.

C. Transportation

Local governments and state and federal agencies should closely coordinate and integrate navigation and port needs with shoreland and upland transportation facilities and the requirements of the Transportation Goal. The cumulative effects of such plans and facilities on the estuarine resources and values should be considered.

D. Mitigation

In identifying and assesing sites to mitigate the effects of dredging or filling, the following factors should be considered:

1. In selecting sites of similar biological potential, areas should preferably be chosen with similar ecological characteristics. The intention of the requirement is to provide an area that, with time, will develop a qualitatively and quantitatively similar fauna and flora. The emphasis is on similar potential, not substitute productivity. The area provided does not have to be fully developed biologically; the oppportunity, at least, should exist for it to develop once the area is returned to the estuarine system. However, the surface area of the estuary should not be diminished.

2. The most appropriate sites would be those in the general proximity of the proposed dredge or fill action. These would probably contain the most similar ecological characteristics. If similar areas are not available nearby, then areas in other parts of the estuary may be selected according to the similarity of the following characteristics (in order of importance, most important first):
   a. salinity regime
   b. tidal exposure and elevation
   c. substrate type
   d. current velocity and patterns
   e. orientation to solar radiation
   f. slope

3. If similar areas, or those with a similar potential, cannot be found or provided, then mitigation efforts should seek to restore areas or resources which are in the greatest scarcity compared to their past abundance and distribution. That is, those resources which have been most severely impacted by man's activities, measured by a ratio of present to past abundance, should be restored through mitigation.

4. Appropriate locations for mitigation activities include:
   a. Dredged material islands, which could be lowered (by removal of spoil) to the intertidal level, thus adding the surface area back to the estuarine system;
   b. Diked marsh areas which have been abandoned or are in disrepair; and
   c. Estuarine areas removed from effective circulation by causeways or other fills, where circulation can be restored or improved through replacement of the causeway with pilings or culverts.

5. The transfer of ownership of estuarine lands, including wetlands and submersible lands, to public ownership; the dedication of estuarine lands for certain natural uses; and the provision of funds for research or land acquisition do not constitute mitigation as required by this Goal.

E. Impact Assessment

The impact assessment required in the Goal should be applied at the time of plan development, for alterations projected or identified in the plan, or at the time of permit review and approval for actions not identified in the plan.

The impact assessment should not be lengthy or complex, but it should enable reviewers to gain a clear understanding of the impacts to be expected. It should include information on:

1. The type and extent of alterations expected;
2. The type of resource(s) affected;
3. The expected extent of impacts of the proposed alteration on water quality and other physical characteristics of the estuary, living resources, recreation and aesthetic use, navigation and other existing and potential uses of the estuary; and
4. The methods which could be employed to avoid or minimize adverse impacts.

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17. COASTAL SHORELANDS

GOAL

OVERALL STATEMENT

To conserve, protect, where appropriate develop and where appropriate restore the resources and benefits of all coastal shorelands, recognizing their value for protection and maintenance of water quality, fish and wildlife habitat, water-dependent uses, economic resources and recreation and aesthetics. The management of these shoreland areas shall be compatible with the characteristics of the adjacent coastal waters; and

To reduce the hazard to human life and property, and the adverse effects upon water quality and fish and wildlife habitat, resulting from the use and enjoyment of Oregon's coastal shorelands.

Programs to achieve these objectives shall be developed by local, state, and federal agencies having jurisdiction over coastal shorelands.

Land use plans, implementing actions and permit reviews shall include consideration of the critical relationships between coastal shorelands and resources of coastal waters, and of the geologic and hydrologic hazards associated with coastal shorelands. Local, state and federal agencies shall within the limit of their authorities maintain the diverse environmental, economic, and social values of coastal shorelands and water quality in coastal waters. Within those limits, they shall also minimize man-induced sedimentation in estuaries, near shore ocean waters, and coastal lakes.

INVENTORY REQUIREMENTS

Inventories shall be conducted to provide information necessary for identifying coastal shorelands and designating uses and policies. These inventories shall provide information on the nature, location, and extent of geologic and hydrologic hazards and shoreland values, including fish and wildlife habitat, water-dependent uses, economic resources, recreational uses, and aesthetics in sufficient detail to establish a sound basis for land and water use management.

The inventory requirements shall be applied within an area known as a coastal shorelands planning area. This planning area is not an area within which development or use is prohibited. It is an area for inventory, study, and initial planning for development and use to meet the Coastal Shorelands Goal.

The planning area shall be defined by the following:

(1) All lands west of the Oregon Coast Highway as described in ORS 366.235, except that:

(a) In Tillamook County, only the lands west of a line formed by connecting the western boundaries of the following described roadways: Brooten Road (County Road 887) northerly from its junction with the Oregon Coast Highway to Pacific City McPhillips Drive (County Road 915) northerly from Pacific City to its junction with Sandlake Road (County Road 871), Sandlake—Cape Lookout Road, (County Road 871) northerly to its junction with Cape Lookout Park, Netarts Bay Drive (County Road 685) northerly from its junction with the Sandlake—Cape Lookout Road (County road 871) to its junction at Netarts with State Highway 131, and northerly along State Highway 131 to its junction with the Oregon Coast Highway near Tillamook.

(b) In Coos County, only the lands west of a line formed by connecting the western boundaries of the following described roadways: Oregon State 240, Cape Arago Secondary (FAS 263) southerly from its junction with the Oregon Coast Highway to Charleston; Seven Devils Road (County Road 33) southerly from its junction with Oregon State 240 (FAS 263) to its junction with the Oregon Coast Highway, near Bandon;

and

(2) All lands within an area defined by a line measured horizontally:

(a) 1000 feet from the shoreline of estuaries; and
(b) 500 feet from the shoreline of coastal lakes.

COMPREHENSIVE PLAN REQUIREMENTS

Based upon inventories, comprehensive plans for coastal areas adjacent to the ocean, estuaries, or coastal lakes shall:

(1) Identify coastal shorelands;
(2) establish policies and uses of coastal shorelands in accordance with standards set forth below:

Identification

Land contiguous with the ocean, estuaries, and coastal lakes shall be identified as coastal shorelands. The extent of shorelands shall include at least:

(1) Lands which limit, control, or are directly affected by the hydraulic action of the coastal water body, including floodways;
(2) Adjacent areas of geologic instability;
(3) Natural or man-made riparian resources, especially vegetation necessary to stabilize the shoreline and to maintain water quality and temperature necessary for the maintenance of fish habitat and spawning areas;
(4) Areas of significant shoreland and wetland biological habitats;
(5) Areas necessary for water-dependent and water-related uses, including areas of recreational importance which utilize coastal water or riparian resources, areas appropriate for navigation and port facilities, and areas having characteristics suitable for aquaculture;
(6) Areas of exceptional aesthetic or scenic quality, where the quality is primarily derived from or related to the association with coastal water areas; and
(7) Coastal headlands.

Coastal Shoreland Uses

(1) Major marshes, significant wildlife habitat, coastal headlands, exceptional aesthetic resources, and historic and archaeological sites shall be protected. Uses in these areas shall be consistent with protection of natural values. Such uses may include propagation and selective harvesting of forest products consistent with the Oregon Forest Practices Act, grazing, harvesting wild crops, and low intensity water-dependent recreation.

(2) Shorelands in urban and urbanizable areas especially suited for water-dependent uses shall be protected for water-dependent recreational, commercial and industrial uses. Some factors which contribute to this special suitability are:

(a) deep water close to shore with supporting land transport facilities suitable for ship and barge facilities;
(b) potential for aquaculture;
(c) protected areas subject to scour which would require little dredging for use as marinas; and
(d) potential for recreational utilization of coastal water or riparian resources.

(3) Shorelands in rural areas other than those designated in (1) above shall be used as appropriate for:

(a) farm uses as provided in ORS Chapter 215;
(b) propagation and harvesting of forest products consistent with the Oregon Forest Practices Act;
(c) private and public water-dependent recreation developments;
(d) aquaculture;
(e) water-dependent commercial and industrial uses and water-related uses only upon a finding by the governing body of the county that such uses satisfy a need which cannot be accommodated on shorelands in urban and urbanizable areas;
(f) subdivisions, major and minor partitions and other uses only upon a finding by the governing body of the county that such uses satisfy a need which cannot be accommodated at other upland locations or in urban or urbanizable areas and are compatible with the objectives of this goal to protect riparian vegetation and wildlife habitat; and
(g) a single family residence on existing lots, parcels or units of land when compatible with the objectives and implementation standards of this goal.

Priority

General priorities for the overall use of coastal shorelands (from highest to lowest) shall be to:

(1) Promote uses which maintain the integrity of estuaries and coastal waters;
(2) Provide for water-dependent uses;
(3) Provide for water-related uses;
(4) Provide for non-dependent, non-

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17. COASTAL SHORELANDS (Continued)

related uses which retain flexibility of future use and do not prematurely or inalterably commit shorelands to more intensive uses;

(5) Provide for development, including non-dependent, non-related uses, in urban areas compatible with existing or committed uses;

(6) Permit non-dependent, non-related uses which cause a permanent or long-term change in the features of coastal shorelands only upon a demonstration of public need.

IMPLEMENTATION REQUIREMENTS

(1) The Oregon Department of Forestry shall recognize the unique and special values provided by coastal shorelands when developing standards and policies to regulate uses of forest lands within coastal shorelands. With other state and federal agencies, the Department of Forestry shall develop forest management practices and policies which protect and maintain the special shoreland values and forest uses.

(2) The land use planning and regulatory authorities of local government and state and federal agencies shall manage floodplain areas in coastal shorelands to promote use and development consistent with the hazards to life and property. Priority uses for flood hazard and floodplain areas shall include agriculture, forestry, recreation and open space, and uses which are water-dependent.

(3) Local government, with assistance from state and federal agencies, shall identify coastal shoreland areas which may be used to fulfill the mitigation requirement of the Estuarine Resources Goal. These areas shall be protected from new uses and activities which would prevent their ultimate restoration or addition to the estuarine ecosystems.

(4) Coastal shorelands identified under the Estuarine Resources Goal for dredged material disposal shall be protected from new uses and activities which would prevent their ultimate use for dredged material disposal.

(5) Because of the importance of the vegetative fringe adjacent to coastal waters to water quality, fish and wildlife habitat, recreational use and aesthetic resource, riparian vegetation shall be maintained; and where appropriate restored and enhanced, consistent with water-dependent uses.

(6) Land-use managment practices and non-structural solutions to problems of erosion and flooding shall be preferred to structural solutions. Where shown to be necessary, water and erosion control structures, such as jetties, bulkheads, seawalls, and similar protective structures; and fill, whether located in the waterways or on shorelands above ordinary high water mark, shall be designed to minimize adverse impacts on water currents, erosion and accretion patterns.

GUIDELINES

The requirements of the Coastal Shorelands Goal should be addressed with the same consideration as applied to previously adopted goals and guidelines. The planning process described in the Land Use Planning Goal (Goal 2), including the exceptions provisions in Goal 2, applies to coastal shoreland areas and implementation of the Coastal Shorelands Goal.

Because of the strong relation of estuarine shorelands to adjacent estuaries, the inventory and planning requirements for estuaries and estuarine shorelands should be fully coordinated. Coastal shoreland inventories and planning should also be fully coordinated with those required in other statewide planning goals, supplementing them where necessary. Of special importance are the plan requirements of the Goals for Agricultural Lands; Forest Lands; Open Spaces, Scenic and Historic Areas and Natural Resources; Air, Water and Land Resources Quality; Areas Subject to Natural Disasters and Hazards; Recreational Needs; and Economy of the State.

A. Inventories

In coastal shoreland areas the following inventory needs should be reviewed. The level of detail information needed will differ depending on the development or alteration proposed and the degree of conflict over the potential designation.

1. Hazard areas, including at least:
   a. Areas the use of which may result in significant hydraulic alteration of other lands or water bodies;
   b. Areas of geological instability in, or adjacent to shorelines; and
   c. The 100 Year Floodplain.
2. Existing land uses and ownership patterns, economic resources, development needs, public facilities, topography, hydrography, and similar information affecting shorelands;
3. Areas of aesthetic and scenic importance;
4. Coastal shoreland and wetland biological habitats which are dependent upon the adjacent water body, plus other coastal shoreland and adjacent aquatic areas of biological importance (feeding grounds, nesting sites, areas of high productivity, etc.,) natural areas and fish and wildlife habitats;
5. Areas of recreational importance;
6. Areas of vegetative cover which are riparian in nature or which function to maintain water quality and to stabilize the shoreline;
7. Sedimentation sources;
8. Areas of present public access and recreational use;
9. The location of archaeological and historial sites; and
10. Coastal headlands.

B. Floodplain

In the development of comprehensive plans, the management of uses and development in floodplain areas should be expanded beyond the minimal considerations necessary to comply with the HUD National Flood Insurance Program and the requirements of the Flood Disaster Protection Act of 1973. Communities may wish to distinguish between the floodway and floodfringe in developing coastal shoreland plans; development in the floodway should be more strictly controlled.

Government projects in coastal shorelands should be examined for their impact on flooding, potential flood damage, and effect on growth patterns in the floodplain. Non-water-dependent emergency service structures (such as hospitals, police and fire stations) should not be constructed in the floodplain. Although they may be floodproofed, access and egress may be prevented during a flood emergency.

C. Open Space, Natural Areas and Aesthetic Resources, and Recreation

Coastal Shorelands provide many areas of unique or exceptional value and benefit for open space, natural areas, and aesthetic and recreational use. The requirements of the goals for Open Spaces, Scenic and Historic Areas and Natural Resources (Goal No. 5) and Recreational Needs (Goal No. 8) should be carefully coordinated with the coastal shoreland planning effort.

The plan should provide for appropriate public access to and recreational use of coastal waters. Public access through and the use of private property shall require the consent of the owner and is a trespass unless appropriate easements and access have been acquired in accordance with law.

D. Development Needs

In coordination with planning for the Estuarine Resources Goal, coastal shoreland plans should designate appropriate sites for water-dependent activities, and for dredged material disposal.

Historic, unique, and scenic waterfront communities should be maintained and enhanced, allowing for non-water-dependent uses as appropriate in keeping with such communities.

E. Transportation

The requirements of the Transportation Goal should be closely coordinated with the Coastal Shorelands Goal. Coastal transportation systems frequently utilize shoreland areas and may significantly affect the resources and values of coastal shorelands and adjacent waters; they should allow appropriate access to coastal shorelands and adjacent waters, and be planned in full recognition of the protection needs for the special resources and benefits which shorelands provide.

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18. BEACHES AND DUNES

GOAL

OVERALL STATEMENT

To conserve, protect, where appropriate develop, and where appropriate restore the resources and benefits of coastal beach and dune areas; and

To reduce the hazard to human life and property from natural or man-induced actions associated with these areas.

Coastal comprehensive plans and implementing actions shall provide for diverse and appropriate use of beach and dune areas consistent with their ecological, recreational, aesthetic, water resource, and economic values, and consistent with the natural limitations of beaches, dunes and dune vegetation for development.

INVENTORY REQUIREMENTS

Inventories shall be conducted to provide information necessary for identifying and designating beach and dune uses and policies. Inventories shall describe the stability, movement, groundwater resource, hazards and values of the beach and dune areas in sufficient detail to establish a sound basis for planing and management. For beach and dune areas adjacent to coastal waters inventories shall also address the inventory requirements of the Coastal Shorelands Goal.

COMPREHENSIVE PLAN REQUIREMENTS

Based upon the inventory, comprehensive plans for coastal areas shall:

(1) identify beach and dune areas; and
(2) establish policies and uses for these areas consistent with the provisions of this goal.

Identification

Coastal areas subject to this goal shall include beaches, active dune forms, recently stabilized dune forms, older stabilized dune forms and interdune forms.

Uses

Uses shall be based on the capabilities and limitations of beach and dune areas to sustain different levels of use or development, and the need to protect areas of critical environmental concern, areas having scenic, scientific, or biological importance, and significant wildlife habitat.

IMPLEMENTATION REQUIREMENTS

(1) Local governments and state and federal agencies shall base decisions on plans, ordinances and land use actions in beach and dune areas, other than older stabilized dunes, on specific findings that shall include at least:

(a) the type of use proposed and the adverse effects it might have on the site and adjacent areas;
(b) temporary and permanent stabilization programs and the planned maintenance of new and existing vegetation;
(c) methods for protecting the surrounding area from any adverse effects of the development; and
(d) hazards to life, public and private property, and the natural environment which may be caused by the proposed use.

(2) Local governments and state and federal agencies shall prohibit residential developments and commercial and industrial buildings on active fordunes, on other fordunes which are conditionally stable and that are subject to ocean undercutting or wave overtopping, and on interdune areas (deflation plains) that are subject to ocean flooding. Other development in these areas shall be permitted only if the findings required in (1) above are presented and it is demonstated that the proposed developent:
(a) is adequately protected from any geologic hazards, wind erosion, undercutting, ocean flooding and storm waves; or is of minimal value; and
(b) is designed to minimize adverse environmental effects.

(3) Local governments and state and federal agencies shall regulate actions in beach and dune areas to minimize the resulting erosion. Such actions include, but are not limited to the destruction of desirable vegetation (including inadvertent destruction by moisture loss or root damage), the exposure of stable and conditionally stable areas to erosion, and construction of shore structures which modify current or wave patterns leading to beach erosion.

(4) Local, state and federal plans, implementing actions and permit reviews shall protect the groundwater from drawdown which would lead to loss of stabilizing vegetation, loss of water quality, or intrusion of salt water into water supplies.

(5) Permits for beach front protective structures shall be issued under ORS 390.605 — 390.770, only where development existed on January 1, 1977. The Oregon Department of Transportation, cooperating with local, state and federal agencies shall develop criteria to supplement the Oregon Beach Law (ORS 390.605 — 390.770) for issuing permits for construction of beach front protective structures. The criteria shall provide that:
(a) visual impacts are minimized;
(b) necessary access to the beach is maintained;
(c) negative impacts on adjacent property are minimized; and
(d) long-term or recurring costs to the public are avoided.

(6) Foredunes shall be breached only to replenish sand supply in interdune areas, or on a temporary basis in an emergency (e.g., fire control, cleaning up oil spills, draining farm lands, and alleviating flood hazards), and only if the breaching and restoration after breaching is consistent with sound principles of conservation.

GUIDELINES

The requirements of the Beaches and Dunes Goal should be addressed with the same consideration as applied to previously adopted goals and guidelines. The planning process described in the Land Use Planning Goal (Goal 2), including the exceptions provisions described in Goal 2, applies to beaches and dune areas and implementation of the Beaches and Dunes Goal.

Beaches and dunes, especially interdune areas (deflation plains) provide many unique or exceptional resources which should be addressed in the inventories and planning requirements of other goals, especially the Goals for Open Spaces, Scenic and Historic Areas and Natural Resources; and Recreational Needs. Habitat provided by these areas for coastal and migratory species is of special importance.

A. Inventories
Local government should begin the beach and dune inventory with a review of **Beaches and Dunes of the Oregon Coast**, USDA Soil Conservation Service and OCC DC, March, 1975, and determine what additional information is necessary to identify and describe:

1. The geologic nature and stability of the beach and dune landforms;
2. patterns of erosion, accretion, and migration ;
3. storm and ocean flood hazards;
4. existing and projected use, development and economic activity on the beach and dune landforms; and
5. areas of significant biological importance.

B. Examples of Minimal Development
Examples of development activity which are of minimal value and suitable for development in conditionally stable dunes and deflation plains include beach and dune boardwalks, fences which do not affect sand erosion or migration, and temporary open-sided shelters.

C. Evaluating Beach and Dune Plans and Actions
Local government should adopt strict controls for carrying out the implementation Requirements of this goal. The controls could include:

1. requirement of a site investigation report financed by the developer;
2. posting of performance bonds to assure that adverse effects can be corrected; and
3. requirement of re-establishing vegetation within a specified time.

D. Sand By-Pass
In developing structures that might excessively reduce the sand supply or interrupt the longshore transport or littoral drift, the developer should investigate, and where possible, provide methods of sand by-pass.

E. Public Access
Where appropriate, local government should require new developments to dedicate easements for public access to public beaches, dunes and associated waters. Access into or through dune areas, particularly conditionally stable dunes and dune complexes, should be controlled or designed to maintain the stability of the area, protect scenic values and avoid fire hazards.

F. Dune Stabilization
Dune stabilization programs should be allowed only when in conformance with the comprehensive plan, and only after assessment of their potential impact.

G. Off Road Vehicles
Appropriate levels of government should designate specific areas for the recreational use of off road vehicles (ORV's). This use should be restricted to limit damage to natural resources and avoid conflict with other activities, including other recreational use.

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19. OCEAN RESOURCES

GOAL

OVERALL STATEMENT

To conserve the long-term values, benefits and natural resources of the nearshore ocean and the continental shelf.

All local, state, and federal plans, policies, projects, and activities which affect the territorial sea shall be developed, managed and conducted to maintain, and where appropriate, enhance and restore, the long-term benefits derived from the nearshore oceanic resources of Oregon. Since renewable ocean resources and uses, such as food production, water quality, navigation, recreation, and aesthetic enjoyment, will provide greater long-term benefits than will non-renewable resources, such plans and activities shall give clear priority to the proper management and protection of renewable resources.

INVENTORY REQUIREMENTS

As local governments and state and federal agencies implement plans or carry out actions, projects, or activities related to or affecting ocean resources, they shall develop inventory information necessary to understand the impacts and relationship of the proposed activity to continental shelf and nearshore ocean resources. As specific actions are proposed, inventory information shall be gathered by the unit of government considering the action with assistance from those agencies and governments which use or manage the resources. The inventory shall be sufficient to describe the long-term impacts of the proposed action on resources and uses of the continental shelf and nearshore ocean.

IMPLEMENTATION REQUIREMENTS

(1) State and federal agencies with planning, permit, or review authorities affected by the Ocean Resources Goal shall review their procedures and standards to assure that the objectives and requirements of the goal are fully addressed. The following authorities are of special concern:

Division of State Lands	
Fill and Removal Law	ORS 541.605 —541.665
Mineral Resources	ORS 273.775 —273.780
Submersible and Submerged lands	ORS 274.005 —274.940
Kelp Law	ORS 274.885 —274.895
Department of Economic Development	
Ports Planning	ORS 777.835
Department of Geology and Mineral Industries	
Mineral Extraction	ORS 520.005
Oil and Gas Drilling	—520.095
Department of Energy	
Regulation of thermal power and nuclear installation	ORS 469.300 —469.570
Department of Environmental Quality	
Water Quality Permits	ORS 468.700 —468.775
Oil spillage Regulation	ORS 468.780 —468.815
Department of Fish and Wildlife	
Fisheries regulation	ORS Chapter 506

(2) Each state and federal agency, special district, city and county within the limits of its jurisdiction and as necessary to:
   (i) determine the impact of proposed projects or actions; and
   (ii) for the sound conservation of ocean resources; shall:

(a) Fishery Resources

   (i) Develop scientific information on the stocks and life histories of commercially, recreationally, and ecologically important species of fish, shellfish, marine mammals and other marine fauna.
   (ii) Designate and enforce fishing regulations to maintain the optimum sustainable yield (OSY) while protecting the natural marine ecosystem.
   (iii) Develop and encourage improved fishing practices and equipment to achieve the OSY while protecting the natural marine ecosystem.
   (iv) Develop scientific understanding of the effects of man's activities, including navigation, mineral extraction, recreation, and waste discharge, on the marine ecosystem.

(b) Biological Habitat

   (i) Identify and protect areas of important biological habitat, including kelp and other algae beds, seagrass beds, rock reef areas and areas of important fish, shellfish and invertebrate concentration.
   (ii) Identify and protect important feeding areas; spawning areas; nurseries; migration routes; and other biologically important areas of marine mammals, marine birds, and commercially and recreationally important fish and shellfish.
   (iii) Determine and protect the integrity of the marine ecosystem, including its natural biological productivity and diversity.

(c) Navigation and Ports

   (i) Determine for the state as a whole, the navigation needs for the coast of Oregon. Such needs will reflect, in part, the capability of each port to handle differing types of ship traffic, consistent with other statewide planning goals.
   (ii) Maintain appropriate navigation lanes and facilities free from interference by other uses to provide safe transportation along and to the Oregon Coast.

(d) Aesthetic Use

   Maintain the aesthetic enjoyment and experiences provided by ocean resources.

(e) Recreation

   Identify, maintain and enhance the diversity, quality, and quantity of recreational opportunities on and over the Oregon continental shelf, as consistent with the Beaches and Dunes Goal and Estuarine Resources Goal.

(f) Waste Discharge and Mineral Extraction

   Provide that extraction of materials from or discharge of waste products into or affecting the Oregon territorial sea do not substantially interfere with or detract from the use of the continental shelf for fishing, navigation, recreation, or aesthetic purposes, or from the long-term protection of renewable resources.

(g) Dredged Material Disposal

   Provide for suitable sites and practices for the open sea discharge of dredged materials, which do not substantially interfere with or detract from the use of the continental shelf for fishing, navigation, or recreation, or from the long-term protection of renewable resources.

(h) Archaeological Sites

   Identify and protect, whenever possible, significant underwater archaeological sites of the continental shelf.

(3) Contingency Plans

   Before issuing permits for development on the Oregon continental shelf, state and federal agencies, in coordination with the permitee, shall establish contingency plans and emergency procedures to be followed in the event that the operation results in conditions which threaten to damage the environment.

GUIDELINES

A. Implementation

The Ocean Resources Goal does not include any specific plan requirements. It primarily sets implementation requirements, giving priority to certain uses and requiring that actions affecting Ocean Resources must be preceded by an inventory and based on sound information.

These requirements address all units of government. Examples of plans, actions or programs of local government which might affect the identified ocean resources include construction and expansion of port and navigation facilities, recreation use, and disposal of chemical, thermal, sewage or dredged material wastes. Other kinds of actions in ocean resource and continental shelf areas are primarily under the regulatory authority of state and federal agencies. these activities must be closely coordinated with local government to

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19. OCEAN RESOURCES (Continued)

avoid or minimize impact on adjacent and affected upland areas.

B. Inventory

The goal does not intend that local government and state and federal agencies develop complete inventories of ocean resources. Rather, it requires that actions affecting the nearshore ocean and continental shelf areas be based upon a sound understanding of the resources and potential impacts. Therefore, the inventory should identify the affected ocean area and describe the extent and significance of:

1. Hydrographic conditions and processes, including characteristics of ocean waves, current, tidal, water quality, and bottom;
2. Geology;
3. Biological features, including fish and shellfish stocks; other biologically important species; important habitat areas inlcuding sea grass and algae beds; and other elements important to maintaining the biological resource such as plankton and benthos;
4. Mineral deposits, including sand and gravel and hydrocarbon resources; and
5. Present and projected uses, use patterns, and values associated with the ocean resource, including commercial fishing, port and navigation uses, recreational activities, and waste discharges.

C. Research

Resource agencies and research organizations should continue to develop complete and comprehensive information on ocean resources to promote their proper management and protection.

D. Fish Harvest

State and federal agencies should encourage, where appropriate and in keeping with sound practices for conservation of ocean resources, the exploitation of unutilized and underutilized fish species.

E. Permits

Permits for development on the Oregon continental shelf should:

1. Designate areas within the proposed development where activities such as exploration and extraction, will be prohibited;
2. Specify methods and equipment to be used and standards to be met;
3. Require the developer to finance monitoring and inspection of the development by the appropriate state agency;
4. Require that pollution abatement utilize the best available technology when needed to protect coastal resources;
5. Require the developer to be liable for individual or public damage caused by the development and to post adequate bonding or other evidence of financial responsibility to cover damages;
6. Specify the extent of restoration that must be accomplished, where appropriate, when the development is finished;
7. Specify that the state or federal government may revoke or modify a permit to prevent or halt damage to the environment and that such revocation or modification will recognize vested rights of the developer;
8. Require the developer to describe the extent and magnitude of onshore support and operation facilities and their social, economic and environmental impacts on the Oregon coast; and
9. Be available for public review and comment before issuance.

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DEFINITIONS

ACCRETION: The build-up of land along a beach or shore by the deposition of waterborne or airborne sand, sediment, or other material.

AGRICULTURAL LAND: See definition in Agricultural Lands Goal.

ANADROMOUS: Referring to fish, such as salmon, which hatch in fresh water, migrate to ocean waters to grow and mature, and return to fresh waters to spawn.

ARCHAEOLOGICAL RESOURCES: Those districts, sites, buildings, structures, and artifacts which posess material evidence of human life and culture of the prehistoric and historic past. (See Historical Resources definition.)

AVULSION: A tearing away or separation by the force of water. Land which is separated from uplands or adjacent properties by the action of a stream or river cutting through the land to form a new stream bed.

BEACH: Gently sloping areas of loose material (e.g., sand, gravel, and cobbles) that extend landward from the low-water line to a point where there is a definite change in the material type or landform, or to the line of vegetation.

BENTHIC: Living on or within the bottom sediments in water bodies.

CARRYING CAPACITY: Level of use which can be accommodated and continued without irreversible impairment of natural resources productivity, the ecosystem and the quality of air, land and water resources.

CITIZEN: Any individual with the planning area; any public or private entity or association within the planning area, including corporation, governmental and private agencies, associations, firms, partnerships, joint stock companies and any group of citizens.

COASTAL LAKES: Lakes in the coastal zone that are created by a dune formation or that have a hydrologic surface or subsurface connection with saltwater.

COASTAL SHORELANDS: Those areas immediately adjacent to the ocean, all estuaries and associated wetlands, and all coastal lakes.

COASTAL STREAM: Any stream within the coastal zone as defined in ORS 191.110.

COASTAL WATERS: Territorial ocean waters of the continental shelf; estuaries; and coastal lakes.

COASTAL ZONE: The area lying between the Washington border on the north to the California border on the south, bounded on the west by the extent of the state's jurisdiction, and in the east by the crest of the coastal mountain range, with the exception of: (a) The Umpqua River basin, where the coastal zone shall extend to Scottsburg; (b) The Rogue River basin, where the coastal zone shall extend to Agness; (c) The Columbia River basin, where the coastal zone shall extend to the downstream end of Puget Island. (ORS 191.110)

CONSERVE: To manage in a manner which avoids wasteful or destructive uses and provides for future availability.

CONSERVATION: The act of conserving the environment.

CONTINENTAL SHELF: The area seaward from the ocean shore to the distance when the ocean depth is 200 meters, or where the ocean floor slopes more steeply to the deep ocean floor. The area beyond the state's jurisdiction is the OUTER Continental Shelf.

DEFLATION PLAIN: The broad interdune area which is wind scoured to the level of the summer water table.

DEVELOP: To bring about growth or availability; to construct or alter a structure, to conduct a mining operation, to make a physical change in the use or appearance of land, to divide land into parcels, or to create or terminate rights of access.

DEVELOPMENT: The act, process or result of developing.

DIVERSITY: The variety of natural, environmental, economic, and social resources, values, benefits, and activities.

DUNE: A hill or ridge of sand built up by the wind along sandy coasts.

DUNE, ACTIVE: A dune that migrates, grows and diminishes from the face of wind and supply of sand. Active dunes include all open sand dunes, active hummocks, and active foredunes.

DUNE, CONDITIONALLY STABLE: A dune presently in a stable condition, but vulnerable to becoming active due to fragile vegetative cover.

DUNE, OLDER STABILIZED: A dune that is stable from wind erosion, and that has significant soil development and that may include diverse forest cover. They include older foredunes.

DUNE, OPEN SAND: A collective term for active, unvegetative dune landforms.

DUNE, RECENTLY STABILIZED: A dune with sufficient vegetation to be stabilized from wind erosion, but with little, if any, development of soil or cohesion of the sand under the vegetation. Recently stabilized dunes include conditionally stable foredunes, conditionally stable dunes, dune complexes, and younger stabilized dunes.

DUNES, YOUNGER STABILIZED: A wind stable dune with weakly developed soils and vegetation.

DUNE COMPLEX: Various patterns of small dunes with partially stabilized intervening areas.

ECOSYSTEM: The living and non-living components of the environment which interact or function together, including plant and animal organisms, the physical environment, and the energy systems in which they exist. All the components of an ecosystem are inter-related.

ENCOURAGE: Stimulate; give help to; foster.

ESTUARY: A body of water semi-enclosed by land, connected with the open ocean, and within which salt water is usualy diluted by freshwater derived from the land. The estuary includes: (a) Estuarine water; (b) Tidelands; (c) Tidal marshes; and (d) Submerged lands. Estuaries extend upstream to the head of tidewater, except for the Columbia River Estuary, which by definition is considered to extend to the western edge of Puget Island.

FILL: The placement by man of sand, sediment, or other material, usually in submerged lands or wetlands, to create new uplands or raise the elevation of land.

FLOODPLAIN: The area adjoining a stream, tidal estuary or coast that is subject to regional flooding.

A REGIONAL (100-YEAR) FLOOD is a standard statistical calculation used by engineers to determine the probability of severe flooding. It represents the largest flood which has a one-percent chance of occuring in any one year in an area as a result of periods of higher than normal rainfall or stream flows, extremely high tides, high winds, rapid snowmelt, natural stream blockages, tsunamis, or combinations thereof.

FLOODWAY: The normal stream channel and the adjoining area of the natural floodplain needed to convey the waters of a regional flood while causing less than one foot increase in upstream flood elevations.

FLOODFRINGE: The area of the floodplain lying outside of the floodway, but subject to periodic inundation from flooding.

FOREDUNE, ACTIVE: An unstable barrier ridge of sand paralleling the beach and subject to wind erosion, water erosion, and growth from new sand deposits. Active foredunes may include areas with beach grass, and occur in sand spits and at river mouths as well as elsewhere.

FOREDUNE CONDITIONALLY STABLE: An active foredune that has ceased growing in height and that has become conditionally stable with regard to wind erosion.

FOREDUNE, OLDER: A conditionally stable foredune that has become wind stabilized by diverse vegetation and soil development.

FOREST LANDS: See definition of commercial forest lands and uses in the Oregon Forest Practices Act and the Forest Lands Goal.

GEOLOGIC: Relating to the occurence and properties of earth. Geologic hazards include faults, land and mudslides, and earthquakes.

HEADLANDS: Bluffs, promontories or points of high shore land jutting out into the ocean, generally sloping abruptly into the water. Oregon headlands are generally identified in the report on **Visual Resource Analysis of the Oregon Coastal Zone, OCCDC, 1974.**

HISTORICAL RESOURCES: Those districts, sites, buildings, structures, and artifacts which have a relationship to events or conditions of the human past. (See Archaeological Resources definition.)

HUMMOCK, ACTIVE: Partially vegetated (usually with beach grass), circular, and elevated mounds of sand which are actively growing in size.

HYDRAULIC: Related to the movement or pressure of water. Hydraulic hazards are those associated with erosion or sedimentation caused by the action of water flowing in a river or streambed, or oceanic currents and waves.

HYDRAULIC PROCESSES: Actions resulting from the effect of moving water or water pressure on the bed, banks, and shorelands of water bodies (ocean, estuaries, streams, lakes, and rivers).

HYDROGRAPHY: The study, description and mapping of oceans, estuaries, rivers and lakes.

HYDROLOGIC: Relating to the occurrence and properties of water. Hydrologic hazards including flooding (the rise of water) as well as hydraulic hazards associated with the movement of water.

IMPACT: The consequences of a course of action; the effect of a goal, guideline, plan, or decision.

INSURE: (Ensure) Guarantee; make sure or certain something will happen.

INTEGRITY: The quality or state of being complete and functionally unimpaired; the wholeness or entirety of a body or system, including its parts, materials, and processes. The integrity of an ecosystem emphasizes the inter-relatedness of all parts and the unity of its whole.

INTERDUNE AREA: Low-lying areas between higher sand landforms which are generally under water during part of the year. (See also Deflation Plain.)

INTERTIDAL: Between the levels of mean

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DEFINITIONS (Continued)

lower low tide (MLLT) and mean higher high tide (MHHT).

KEY FACILITIES: Basic facilities that are primarily planned for by local government but which also may be provided by private enterprise and are essential to the support of more intensive development, including public schools, transportation, water supply, sewage and solid waste disposal.

LCDC: Land Conservation and Development Commission of the State of Oregon. Seven lay-citizens, non-salaried, appointed by the Governor, confirmed by the Oregon Senate; at least one commissioner from each Congressional District; no more than two from Multnomah County.

LITTORAL DRIFT: The material moved, such as sand or gravel, in the littoral (shallow water nearshore) zone under the influence of waves and currents.

MAINTAIN: Support, keep and continue in an existing state or condition without decline.

MANAGEMENT UNIT: A discrete geographic area, defined by biophysical characteristics and features, within which particular uses and activities are promoted, encouraged, protected, or enhanced, and others are discouraged, restricted, or prohibited.

NATURAL AREAS: Includes land and water that has substantially retained its natural character, which is an important habitat for plant, animal, or marine life. Such areas are not necessarily completely natural or undisturbed, but can be significant for the study of natural, historical, scientific, or paleontological features, or for the appreciation of natural features.

NATURAL RESOURCES: Air, land and water and the elements thereof which are valued for their existing and potential usefulness to man.

OCCDC: Oregon Coastal Conservation and Development Commission, created by ORS 191; existed from 1971 to 1975. Its work is continued by LCDC.

OCEAN FLOODING: The flooding of lowland areas by salt water owing to tidal action, storm surge, or tsunamis (seismic sea waves). Land forms subject to Ocean Flooding include beaches, marshes, coastal lowlands, and low-lying interdune areas. The highest predicted tide is approximately six (6) feet above Mean Sea Level (MSL). The highest probable storm surge is four to seven (4-7) feet above prevailing tidal elevation. The highest probable tsunami is approximately 14 feet above prevailing tidal elevation in mouths of estuaries and slightly higher on beaches. Because tidal flooding occurs twice daily, the effect of high tide is superposed on that of storm surges or tsunamis in determining the impact of these phenomena.

PLANNING AREA: The air, land and water resources within the jurisdiction of a governmental agency.

POLLUTION: The violation or threatened violation of applicable state or federal environmental quality statutes, rules and standards.

PRESERVE: To save from change or loss and reserve for a special purpose.

PROGRAM: Proposed or desired plan or course of proceedings and action.

PROTECT: Save or shield from loss, destruction, or injury or for future intended use.

PROVIDE: Prepare, plan for, and supply what is needed.

PUBLIC FACILITIES AND SERVICES: Projects, activities and facilities which the planning agency determines to be necessary for the public health, safety and welfare.

PUBLIC GAIN: The net gain from combined economic, social, and environmental effects which accrue to the public because of a use or activity and its subsequent resulting effects.

QUALITY: The degree of excellence or relative goodness.

RECREATION: Any experience voluntarily engaged in largely during leisure (discretionary time) from which the individual derives satisfaction.

COASTAL RECREATION occurs in offshore ocean waters, estuaries, and streams, along beaches and bluffs, and in adjacent shorelands. It includes a variety of activities, from swimming, scuba diving, boating, fishing, hunting, and use of dune buggies, shell collecting, painting, wildlife observation, and sightseeing, to coastal resorts and water-oriented restaurants.

LOW INTENSITY RECREATION does not require developed facilities and can be accommodated without change to the area or resource. For example, boating, hunting, hiking, wildlife photography, and beach or shore activities can be low intensity recreation.

HIGH INTENSITY RECREATION uses specially built facilities, or occurs in such density or form that it requires or results in a modification of the area or resource. Campgrounds, golf courses, public beaches, and marinas are examples of high intensity recreation.

RESTORE: Revitalizing, returning, or replacing original attributes and amenities, such as natural biological productivity, aesthetic and cultural resources, which have been diminished or lost by past alterations, activities, or catastrophic events.

ACTIVE RESTORATION involves the use of specific positive remedial actions, such as removing fills, installing water treatment facilities, or rebuilding deteriorated urban waterfront areas.

PASSIVE RESTORATION is the use of natural processes, sequences, and timing or which occurs after the removal or reduction of adverse stresses without other specific positive remedial action.

RIPARIAN: Of, pertaining to, or situated on the edge of the bank of a river or other body of water.

RIPRAP: A layer, facing, or protective mound of stones randomly placed to prevent erosion, scour or sloughing of a structure or embankment; also, the stone so used. In local usage, the similar use of other hard material, such as concrete rubble, is also frequently included as riprap.

RURAL LAND: Rural lands are those which are outside the urban growth boundary and are: (a) Non-urban agricultural, forest or open space lands or, (b) Other lands suitable for sparse settlement, small farms or acreage homesites with no or hardly any public services, and which are not suitable, necessary or intended for urban use.

SEDENTARY: Attached firmly to the bottom, generally incapable of movement.

SHORELINE: The boundary line between a body of water and the land, measured on tidal waters at mean higher high water, and on non-tidal waterways at the ordinary high water mark.

SIGNIFICANT HABITAT AREAS: A land or water area where sustaining the natural resource characteristics is important or essential to the production and maintenance of aquatic life or wildlife populations.

SOCIAL CONSEQUENCES: The tangible and intangible effects upon people and their relationships with the community in which they live resulting from a particular action or decision.

STRUCTURE: Anything constructed or installed or portable, the use of which requires a location on a parcel of land.

SUBSTRATE: The medium upon which an organism lives and grows. The surface of the land or bottom of a water body.

SUBTIDAL: Below the level of mean lower tide (MLLT).

TERRITORIAL SEA: The ocean and seafloor area from mean lower water seaward three nautical miles.

TIDAL MARSH: Wetlands from lower high water (LHW) inland to the line of non-aquatic vegetation.

URBAN LAND: Urban areas are those places which must have an incorporated city. Such areas may include lands adjacent to and outside the incorporated city and may also; (a) Have concentrations of persons who generally reside and work in the area (b) Have supporting public facilities and services.

URBANIZABLE LAND: Urbanizable lands are those lands within the urban growth boundary and which are identified and (a) Determined to be necessary and suitable for future urban areas (b) Can be served by urban services and facilities (c) Are needed for the expansion of an urban area.

WATER-DEPENDENT: A use or activity which can be carried out only on, in, or adjacent to water areas because the use requires access to the water body for water-borne transportation, recreation, energy production, or source of water.

WATER-RELATED: Uses which are not directly dependent upon access to a water body, but which provide goods or services that are directly associated with water-dependent land or waterway use, and which, if not located adjacent to water, would result in a public loss of quality in the goods or services offered. Except as necessary for water-dependent or water-related uses or facilities, residences, parking lots, spoil and dump sites, roads and highways, restaurants, businesses, factories, and trailer parks are not generally considered dependent on or related to water location needs.

WETLANDS: Land areas where excess water is the dominant factor determining the nature of soil development and the types of plant and animal comunities living at the soil surface. Wetland soils retain sufficient moisture to support aquatic or semi-aquatic plant life. In marine and estuarine areas, wetlands are bounded at the lower extreme by extreme low water, in freshwater areas, by a depth of six feet. The areas below wetlands are submerged lands.

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STATE HISTORIC PRESERVATION PLAN
ORS 358.605 - ORS 358.622

HISTORIC PRESERVATION PLAN

358.605 Legislative findings. (1) The Legislative Assembly declares that the cultural heritage of Oregon is one of the state's most valuable and important assets; that the public has an interest in the preservation and management of all antiquities, historic and prehistoric ruins, sites, structures, objects, districts, buildings and similar places and things for their scientific and historic information and cultural and economic value; and that the neglect, desecration and destruction of cultural sites, structures, places and objects result in an irreplaceable loss to the public.

(2) The Legislative Assembly finds that the preservation and rehabilitation of historic resources are of prime importance as a prime attraction for all visitors; that they help attract new industry by being an influence in business relocation decisions; and that rehabilitation projects are labor intensive, with subsequent benefits of payroll, energy savings and are important to the revitalization of deteriorating neighborhoods and downtowns.

(3) It is, therefore, the purpose of this state to identify, foster, encourage and develop the preservation, management and enhancement of structures, sites and objects of cultural significance within the state in a manner conforming with, but not limited by, the provisions of the National Historic Preservation Act of 1966 (P.L. 89-665; 16 U.S.C. 470). [1983 c.268 §1]

358.610 [1953 c.475 §1; renumbered 390.410]

358.612 Duties of State Historic Preservation Officer. (1) Shall conduct or cause to have conducted a comprehensive, state-wide survey to identify districts, sites, buildings, structures and objects that are potentially significant in Oregon history, prehistory, architecture, archaeology and culture;

(2) Shall prepare and implement a comprehensive state-wide historic preservation plan to assist local governments in developing their preservation programs and participate in the national program;

(3) Shall maintain a state-wide inventory of historic properties;

(4) Shall create a mechanism for an Oregon State Register of Historic Properties in which to record significant historic properties with the State Advisory Committee on Historic Preservation developing the criteria for such properties;

(5) Shall nominate properties of historical, prehistoric architectural, archaeological and cultural significance to the Oregon State Register of Historic Properties and to the National Register of Historic Places;

(6) Shall administer state and federal tax incentive provisions for the preservation of properties on the state and national registers;

(7) Shall provide information on federal and state tax benefits for preservation projects;

(8) Shall administer grant programs to conduct surveys of historic properties and to assist the development of properties on the state and national registers;

(9) Shall provide or assist other appropriate state agencies in providing information and education on the economic and social benefits of developing historical and cultural resources;

(10) Shall provide public education and information to foster the purposes of ORS 358.565 to 358.622;

(11) Shall provide technical assistance as funds permit;

(12) Shall work with local, state-wide and national organizations to develop means of promoting historic preservation, including legislation, financing, education, easements, conferences and workshops and audio-visual materials;

(13) Shall, when a project involves Native American concerns, work with the Commission on Indian Services, project administrators and the local Indian tribes or communities to insure that these concerns are adequately addressed;

(14) May review and comment on the impact of publicly funded projects and programs;

(15) May accept gifts and grants to be used for purposes consistent with ORS 358.565 to 358.622; and

(16) Subject to the availability of funds therefor, serve as staff for the State Advisory Committee on Historic Preservation. [1983 c.268 §3]

358.615 [1953 c.475 §2; 1955 c.547 §1; renumbered 390.420]

358.617 Rulemaking. Pursuant to ORS 183.310 to 183.550, the State Historic Preservation Officer shall adopt rules to carry out the duties and functions of the officer, including rules governing cultural resource management programs and grants-in-aid program categories. [1983 c.268 §4]

358.620 [1953 c.475 §4; 1955 c.547 §2; renumbered 390.430]

358.622 State Advisory Committee on Historic Preservation. (1) There is created a State Advisory Committee on Historic Preservation consisting of not more than nine members appointed by the Governor. At least one-half of the members shall be from among persons recognized as professionals in the areas of history, architectural history, architecture, archaeology, museum management or cultural or ethnic minorities. A representative of the Oregon Native American Indian community shall be appointed.

(2) The committee:

(a) Shall review and make recommendations concerning nominations by the State Historic Preservation Officer of properties to the state and national registers of historic properties and places;

(b) Shall advise the State Historic Preservation Officer on matters of policy, programs and budget; and

(c) May perform such other duties as may be requested by the State Historic Preservation Officer.

(3) The Governor shall select the chairperson and vice-chairperson with such terms and duties as the committee may prescribe. Five members of the committee constitute a quorum. The committee shall meet a minimum of three times a year.

(4) Members of the committee shall not receive compensation but shall be entitled to actual and necessary travel expenses subject to ORS 292.495.

(5) The committee shall develop the criteria for the creation of an Oregon State Register of Historic Properties, and review properties for acceptance by the Oregon Property Management Account and may appoint any other committee or subcommittee necessary to carry out its functions. [1983 c.268 §5]

358.625 [1953 c.475 §3; renumbered 390.440]

358.630 [1953 c.475 §5; renumbered 390.450]

CLASSIFICATION OF HISTORIC PROPERTIES
ORS 358.475 - ORS 358.565
And Other Relevant Statutes

CLASSIFICATION OF HISTORIC PROPERTY

358.475 Policy. The Legislative Assembly hereby declares that it is in the best interest of the state to maintain and preserve properties of Oregon historical significance. [1975 c.514 §1]

358.480 Definitions for ORS 358.475 to 358.565. As used in ORS 358.475 to 358.545, unless the context requires otherwise:

(1) "Governing body" means the city or county legislative body having jurisdiction over the property for which a limited assessment may be applied for under ORS 358.475 to 358.545.

(2) "Historic property" means real property that is currently listed in the National Register of Historic Places, established and maintained under the National Historic Preservation Act of 1966 (P.L. 89-665) or if the National Register of Historic Places ceases accepting nominations, the property is approved for listing on an Oregon register of historic places, that is open to the public for sight-seeing at least one day in each calendar year in accordance with rules adopted by the state historic preservation officer and that meets the minimum standards of maintenance established by rule of the state historic preservation officer.

(3) "Owner" includes a purchaser under recorded instrument of sale. [1975 c.514 §2; 1983 c.720 §1]

358.485 Application for classification and assessment as historic property. (1) An owner of historic property desiring classification and assessment under ORS 358.475 to 358.545 shall make application to the county assessor upon forms approved by the Department of Revenue and consent in writing to the viewing of the property by the state historic preservation officer and the State Advisory Committee on Historic Preservation. Applications shall be made prior to December 31, 1975, for classification for the assessment year commencing January 1, 1976, and thereafter applications to the county assessor shall be made during the calendar year preceding the first assessment year for which classification is requested, except that no application shall be made under this subsection after December 31, 1983. Application for classification shall be granted only for those 15 consecutive assessment years immediately following the calendar year in which the application is made.

(2) On and after January 1, 1984, an owner of historic property desiring classification and assessment under ORS 358.475 to 358.545 for the property shall make application to the state historic preservation officer on forms approved by the state historic preservation officer. The forms shall include or be accompanied by the written consent of the owner to the viewing of the property by the state historic preservation officer and by the State Advisory Committee on Historic Preservation. Except as provided in subsection (3) of this section, applications shall be made on or before December 31, 1984, for classification for the assessment year commencing January 1, 1985, and thereafter applications shall be made during the calendar year preceding the first assessment year for which classification is requested. The state historic preservation officer shall immediately send a copy of any application to the appropriate county assessor and governing body. Applications for classification shall be granted only for those 15 consecutive assessment years immediately following the calendar year in which the application is made.

(3) An owner may make preliminary application for classification of property as historic upon approval by the State Advisory Committee on Historic Preservation of the nomination of the property for listing on the National Register of Historic Places or, if the National Register of Historic Places ceases accepting nominations, the nomination of the property for listing on an Oregon register of historic places. The preliminary application shall be considered an application made or received for purposes of subsection (2) of this section, ORS 358.490 or 358.495, or other law, if the property is actually listed in the National Register of Historic Places or, if the National Register of Historic Places ceases accepting nominations, the property is approved for listing on an Oregon register of historic places by March 15 of the year following preliminary application. If the property is not listed on the National Register of Historic Places or, if the National Register of Historic Places ceases accepting nominations, the property is not approved for listing on an Oregon register of historic places by March 15 of the year following preliminary application, then the preliminary application shall be considered an application made or received for purposes of subsection (2) of this

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section, ORS 358.490, 358.495 or other law, on the date the property is actually listed.

(4) Immediately upon receipt of a copy of the application under subsection (2) of this section, the county assessor shall review the application for accuracy and completeness of description and other matters within the expertise of the county assessor and shall make recommendations regarding the classification to the state historic preservation officer.

(5) Immediately upon receipt of a copy of the application under subsection (2) of this section, the governing body shall review the application for matters relating to public benefit and shall make recommendations regarding the classification to the state historic preservation officer.

(6) By making application for classification and assessment under ORS 358.475 to 358.545, the owner consents that the state historic preservation officer have access to the property for inspection at reasonable times to insure that the terms of the national register or other federal or state laws or requirements are being met.

(7) The application for classification and assessment under ORS 358.475 to 358.545 shall not be processed unless accompanied by a nonrefundable fee of one-tenth of one percent of the assessed value of the property for the year in which application is made. The fee shall be deposited in the Highway Fund for use by the Administrator of the Parks and Recreation Division or for transfer to the Oregon Property Management Account established under ORS 358.680 to 358.690, upon the advice of the State Advisory Committee on Historic Preservation. [1975 c.514 §3; 1983 c.720 §3]

Note: Section 15, chapter 514, Oregon Laws 1975, as amended by section 2, chapter 346, Oregon Laws 1979, provides:

Sec. 15. Notwithstanding ORS 358.485, no application may be made under ORS 358.475 to 358.545 after December 31, 1985.

358.490 Referral of application to state historic preservation officer; review, approval in whole or part; withdrawal. (1) Within 10 days after the filing of an application filed before January 1, 1984, the county assessor shall refer each application for classification to the state historic preservation officer. Following referral, or after an application is filed under ORS 358.485 (2) or (3), the State Advisory Committee on Historic Preservation shall review the application and may view the premises. The state historic preservation officer shall not disapprove the application solely because of the potential loss of revenue that may result from granting the application if the state historic preservation officer finds that the property is historic property.

(2) During the review process, the state historic preservation officer shall consider the county assessor's and governing body's recommendations submitted under ORS 358.485 (4) and (5).

(3) The state historic preservation officer may approve the application with respect to only part of the property which is the subject of the application. However, if any part of the application is denied, the applicant may withdraw the application. [1975 c.514 §4; 1983 c.720 §4]

358.495 Notice of approval or disapproval; effect of approval; request for hearing. (1) Immediately following approval or disapproval of an application under ORS 358.490, the state historic preservation officer shall notify the county assessor and the applicant which shall in no event be later than April 1 of the year following the year that the application is considered received under ORS 358.485. An application not denied by April 1 shall be deemed approved, and the property which is the subject of the application shall be considered to be historic property which qualifies under ORS 358.475 to 358.545.

(2) When the state historic preservation officer determines that the historic property qualifies under ORS 358.475 to 358.545, the state historic preservation officer shall certify that fact in writing and shall file a copy of the certificate with the county assessor within 10 days. The certificate shall state the facts upon which the approval was based. The county assessor, as to any such historic property, shall assess on the basis provided in ORS 368.505, and each year the historic property is classified and so assessed shall also enter on the assessment and tax roll that the property is being specially assessed as historic property and is subject to potential additional taxes as provided in ORS 358.525 by adding the notation "historic property (potential additional tax)."

(3) Any owner or county assessor affected by a determination of the state historic preservation officer made under ORS 358.475 to 358.565 may request a contested case hearing before the state historic preservation officer according to the provisions of ORS 183.310 to 183.550. [1975 c.514 §5; 1983 c.720 §5]

Note: Section 14, chapter 720, Oregon Laws 1983, provides:

Sec. 14. The amendments to ORS 358.495 (3) by section 5 of this Act first apply to complaints filed in the

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court system on or after the effective date of this Act [October 15, 1983]. The provisions of this Act do not apply to any appeal in which an amended complaint is filed on or after the effective date of this Act, if the original complaint in the appeal was filed before the effective date of this Act.

358.502 [1957 c.196 §1; repealed by 1957 c.196 §10]

358.504 [1957 c.196 §3; repealed by 1957 c.196 §10]

358.505 Entitlement of property to special assessment. (1) For purposes of ORS 308.232, the county assessor shall, for the 15 consecutive assessment years elected under ORS 358.485, value property classified as historic property at the true cash value of the property at the time application under ORS 358.485 was made.

(2) The entitlement of property to the special assessment provisions of this section shall be determined as of January 1. However, if property so qualified becomes disqualified prior to July 1 of the same year, it shall be valued under ORS 308.232 at its true cash value as defined by law without regard to this section. If the property becomes disqualified on or after July 1, its assessment for that year shall continue as provided in this section.

(3) True cash value, as defined and determined under ORS 308.205 and 308.235, shall be determined for property classified as historic property by the county assessor each year. The true cash value so determined for any year shall be subject to appeal to the county board of equalization within the time and in the manner provided in ORS chapter 309 and shall be subject to appeal thereafter to the Department of Revenue and the Supreme Court within the time and in the manner provided for appeals of value determination for purposes of ad valorem property taxation. [1975 c.514 §6; 1981 c.804 §97; 1983 c.720 §6]

358.506 [1957 c.196 §4; repealed by 1957 c.196 §10]

358.508 [1957 c.196 §5; repealed by 1957 c.196 §10]

358.509 Review of continued qualification of property by state historic preservation officer. If the county assessor or State Advisory Committee on Historic Preservation has reason to believe that property classified as historic property is not being maintained or preserved as required under the National Historic Preservation Act of 1966 (P.L. 89-665) or as required under rules established by the state historic preservation officer or otherwise no longer qualifies for classification and special assessment as historic property, the county assessor or State Advisory Committee on Historic Preservation shall request the state historic preservation officer to determine if the property continues to qualify. The request shall be in writing. Upon receipt of the request, the state historic preservation officer shall inspect the property and may take whatever steps are necessary to determine if the property continues to qualify for special assessment including a request for a report under ORS 358.535. The state historic preservation officer shall notify the county assessor of the determination made pursuant to the request of the assessor within 120 days after the request is received. A determination by the state historic preservation officer that the property no longer qualifies shall constitute a discovery described in ORS 358.515 (1)(c). [1979 c.346 §4; 1983 c.720 §7]

358.510 [Repealed by 1957 c.196 §2]

358.512 [1957 c.196 §6; repealed by 1957 c.196 §10]

358.514 [1957 c.196 §7; repealed by 1957 c.196 §10]

358.515 Loss of special assessment; effect of sale or transfer; notice to assessor when property ceases to qualify. (1) When property has once been classified and assessed as historic property under ORS 358.475 to 358.545, it shall remain so classified and be granted the special assessment provided by ORS 358.505 until the property becomes disqualified for such classification and assessment by:

(a) Written notice by the taxpayer to the assessor to remove the special assessment.

(b) Sale or transfer to an ownership making it exempt from property taxation.

(c) Removal of the special assessment by the assessor upon discovery that the property no longer qualifies as historic property.

(2) The sale or transfer to a new owner or transfer by reason of death of a former owner to a new owner shall not operate to disqualify the property from the special assessment provided by ORS 358.505 so long as the property continues to qualify as historic property as defined in ORS 358.480.

(3) When, for any reason, the property or any portion thereof ceases to qualify as historic property as defined in ORS 358.480, the owner at the time of change shall notify the assessor and the state historic preservation officer of the change prior to the next January 1 date. [1975 c.514 §7; 1979 c.346 §1; 1983 c.720 §8]

358.516 [1957 c.196 §10; repealed by 1957 c.196 §10]

358.520 [Renumbered 390.220]

358.525 Imposition of penalty when property disqualified; exception. (1) Except as provided in subsection (4) of this section, whenever property which has received special

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assessment as historic property under ORS 358.505 thereafter becomes disqualified for such assessment as provided in ORS 358.515, there shall be added to the tax extended against the property on the next general property tax roll, to be collected and distributed in the same manner as the remainder of real property tax, a penalty equal to 10 times (or such lesser number of times, corresponding to the years of assessment as historic property applicable to the property) the total amount by which the taxes assessed against the property would have been increased if it had been valued without regard to ORS 358.505 as of January 1 of the assessment year for which special assessment as historic property was last in effect for the property.

(2) Whenever property that has received special assessment as historic property under ORS 358.505 becomes disqualified for such assessment and either notice required by ORS 358.515 (3) is not given, the assessor shall determine the date that the notice should have been given, shall notify the owner thereof and notwithstanding ORS 311.220, there shall be added to the tax extended against the property on the next general property tax roll, to be collected and distributed in the same manner as the remainder of the real property tax, in full payment of all taxes and penalties accruing from the disqualification, a penalty equal to the sum of the following:

(a) The difference between the total taxes due on the property during the last year in which special assessment under ORS 358.505 was in effect for the property (even though erroneously) and the taxes which would have been due had special assessment not been in effect, multiplied by

(b) The number of years that the special assessment was properly in effect for the property plus the number of years that special assessment was in effect for the property after notice should have been given under ORS 358.515 (3), plus

(c) An additional penalty of 15 percent of the product of paragraphs (a) and (b) of this subsection.

(3) Prior to adding to the tax extended against the property on the next general property tax roll of a penalty imposed by subsection (1) or (2) of this section, in the case of disqualification pursuant to ORS 358.515 (1)(c), the assessor shall notify the owner of the property by mail, return receipt requested, of the disqualification.

(4) No penalty shall be imposed under subsection (1) or (2) of this section upon the sale or transfer to an ownership making it exempt from property taxation. No penalty shall be imposed under subsection (1) or (2) of this section if the historic property is destroyed by fire or act of God.

(5) The amount determined to be due under subsection (1) or (2) of this section may be paid to the tax collector prior to the completion of the next general property tax roll, pursuant to ORS 311.370. [1975 c.514 §8, 1979 c.350 §18, 1983 c.720 §9]

358.530 [Repealed by 1959 c.242 §1]

358.535 Reports from owners; effect of failure to comply. The state historic preservation officer shall at all times be authorized to demand and receive reports from owners of property classified under ORS 358.475 to 358.545 as to the continued qualification of the same for classification as historic property. If the owner shall fail, after 90 days' written notice by mail, return receipt requested, to comply with such demand, the state historic preservation officer shall immediately notify the assessor and the assessor shall withdraw the property from classification and apply the penalties provided by ORS 358.525. [1975 c.514 §9]

358.540 Effect of classification and assessment as historic property on exemptions or other special assessments. (1) Property classified as historic property shall not be entitled to any other exemption or special assessment provided by law.

(2) Nothing in ORS 358.475 to 358.545 shall be construed to deny classification as historic property to property that has been classified as historic one or more times previous to the date of the current application from again being classified as historic and receiving the special assessment granted under ORS 358.475 to 358.545 if:

(a) The property was removed from the previous classification under ORS 358.515 each time that it was so classified; and

(b) Upon removal, the additional taxes, interest and penalties provided under ORS 358.525 were paid in full for each year that the property was so classified and granted the special assessed value under ORS 358.505 prior to its removal. [1975 c.514 §10; 1983 c.720 §10]

358.543 Effect of new construction on historic classification; notice. (1) Any additions made that are historically accurate reconstructions of once extant features or necessary for safety or handicapped access or required by safety code requirements may be classified as not being "new construction" by the state historic

preservation officer if the state historic preservation officer so determines after request is made by the owner.

(2) If new construction takes place on or after October 15, 1983, with respect to property for which a certificate already has been filed under ORS 358.495 (2), the new construction shall not be considered classified as historic nor shall the new construction receive the special valuation accorded historic property under ORS 358.505. The new construction shall be valued for ad valorem property tax purposes at its true cash value and shall be assessed at the percentage of its true cash value provided in ORS 308.232.

(3) Any notice required under ORS 308.025 to be sent by a public official or agency with regard to a change in classification to or from historic property classification shall be given by the county assessor rather than the state historic preservation officer.

(4) As used in this section, "new construction" includes, but is not limited to:

(a) An additional new building, structure or other improvement outside the building envelope, including but not limited to a parking area to be or in use for commercial purposes.

(b) An enlargement of the exterior perimeters of an existing building, structure or improvement.

(c) Any story or stories added to an existing building, structure or improvement. [1983 c.720 §§12, 13]

358.545 Rules of state historic preservation officer. The person designated as state historic preservation officer under ORS 358.565 shall adopt rules, pursuant to ORS 183.310 to 183.550, with regard to the determination of entitlement of historic properties to the special assessment accorded by ORS 358.475 to 358.545. The rules shall:

(1) Encompass requirements for allowance and substantiation of public sight-seeing of historic property classified under ORS 358.475 to 358.545;

(2) Provide minimum maintenance standards for the property; and

(3) Delineate any other matters necessary to carry out the purposes of ORS 358.475 to 358.545. [1975 c.514 §11]

358.565 State historic preservation officer. (1) The Governor shall designate a State Historic Preservation Officer who shall serve at the pleasure of the Governor. In case of vacancy, the Governor shall designate a successor.

(2) The State Historic Preservation Officer shall appoint a staff of persons well qualified in history, architectural history, architecture, archaeology and education as technical assistants and analysts.

(3) In addition to the powers and duties assigned to the State Historic Preservation Officer under ORS 358.475 to 358.545, the State Historic Preservation Officer shall perform whatever functions as are authorized by law. [1975 c.514 §12; 1983 c.268 §2]

PRESERVATION OF PROPERTY OF HISTORIC SIGNIFICANCE

358.635 Definition of "state agency." As used in ORS 358.635 to 358.655, "state agency" includes all officers, employes, agencies, boards, committees and commissions of the legislative, executive, administrative and judicial branches of state government. [1979 c.205 §5]

358.640 State property of historical significance; catalog; recommendations to state agency. (1) The Department of General Services shall identify and catalog state-owned real property and personal property which has state or national historic significance.

(2) The department shall make recommendations to any state agency or political subdivision that possesses historically significant real property or personal property relating to its retention, preservation, maintenance, use or transfer to the custody of any public or private agency or person.

(3) Real property found to be of historic significance pursuant to ORS 358.645 shall be entered into the State Register of Historic Places if one is established. [1979 c.205 §1; 1983 c.295 §2]

358.645 Private property of historic significance; catalog; recommendations to state agencies. (1) A private owner of real property or personal property believed to have state or national historic significance which the owner wishes to give to the state or to a political subdivision may request review of the significance of the property by the Department of General Services.

(2) The department shall:

(a) Identify and catalog historically significant property; and

(b) Make recommendations to appropriate state agencies or political subdivisions regarding acceptance, preservation, maintenance and use of historically significant property. [1979 c.205 §2; 1983 c.295 §3]

358.650 Acceptance of private property as gift to state; custody. (1) Whenever a prospective donor of real or personal property identified as historically significant pursuant to ORS 358.645 requires immediate acceptance of the property as a condition of a gift, the Department of General Services may accept the gift on behalf of the state or political subdivision and may place the gift in the custody of a state agency or political subdivision under agreement between the department and the agency or political subdivision.

(2) The Department of General Services may transfer under agreement between the department and the agency or political subdivision any gift accepted pursuant to this section to the custody of an appropriate state agency or political subdivision.

(3) The department shall not enter into any lease-back arrangement the effect of which would be to remove real property from the tax rolls but allow the donor to continue to use the property unless the department makes payments in lieu of taxes otherwise assessable against the property. [1979 c.205 §3; 1983 c.295 §4]

358.653 Conservation program; leases. (1) The Department of General Services or political subdivision responsible for real property of historic significance shall institute a program to conserve the property and assure that such property shall not be inadvertently transferred, sold, demolished, substantially altered or allowed to deteriorate.

(2) The Department of General Services and political subdivisions may and are encouraged to lease real property of historic significance to private businesses and nonprofit organizations for purposes which are consistent with the nature of the property.

(3) Where possible, the Department of General Services shall acquire or lease buildings of historic significance for state use.

(4) As used in this section, "political subdivision" includes counties, cities, school districts and any other governmental unit within the state not included in ORS 358.635. [1983 c.295 §§1, 5, 6]

358.655 Advisory committee. The Director of the Department of General Services, in consultation with interested persons and organizations, shall appoint an advisory committee to assist in carrying out the duties of the department under ORS 358.635 to 358.655. [1979 c.205 §4]

OREGON PROPERTY MANAGEMENT PLAN

358.680 Definitions for ORS 358.683 to 358.690. As used in ORS 358.683 to 358.690:

(1) "Administrator" means the Administrator of the Parks and Recreation Division.

(2) "Committee" means the State Advisory Committee on Historic Preservation established in ORS 358.622.

(3) "Division" means the Parks and Recreation Division.

(4) "Oregon Property Management Program" means the program established in ORS 358.683.

(5) "State Historic Preservation Officer" means the officer designated under ORS 358.565. [1983 c.231 §1]

358.683 Oregon Property Management Program. (1) The administrator, with the advice of the State Advisory Committee on Historic Preservation shall formulate and implement an Oregon Property Management Program. The program shall include, but need not be limited to:

(a) Policies and plans for accepting and preserving historic sites and property in Oregon;

(b) Criteria for selecting sites and property according to the provisions of ORS 358.680 to 358.690; and

(c) Any other provision necessary to administer the program.

(2) The administrator and the committee shall coordinate activities concerning historic properties with the State Historic Preservation Officer.

(3) In accordance with any applicable provision of ORS 183.310 to 183.550, the administrator may promulgate rules to carry out the provisions of the Oregon Property Management Program. [1983 c.231 §3]

358.685 Duties of administrator. In addition to any other duties or powers provided by law, the administrator may, with the advice of the committee:

(1) Except as otherwise provided in ORS 358.650 (1), accept, from whatever source, appropriations, gifts or grants of money or other property for the preservation of significant historic sites and properties, and use the money or property to preserve significant historic sites and properties.

(2) Sell or exchange property owned by the state and used for state heritage or historic preservation purposes if the administrator determines that the sale or exchange would be advantageous to the state for the preservation of significant historic sites and properties.

(3) Acquire by purchase, lease, agreement or gift real property and all appropriate interests therein for significant sites and properties of recreational value and purpose.

(4) Acquire by purchase, lease, agreement, gift or otherwise real property and all interests therein and establish, operate and maintain thereon significant historic sites and properties.

(5) Establish and develop significant historic sites and properties and prescribe rules governing the use of significant historic sites and properties established and developed under any other provision of state law.

(6) By rule prescribe reasonable fees for recreational uses of real property owned or managed by the administrator, unless those fees or user charges are otherwise prescribed by law or administrative rule.

(7) Enter into contracts with any person or governmental agency for the development and encouragement of programs and projects designed to preserve significant historic sites and properties.

(8) Perform the acts necessary for the establishment and implementation of programs designed to preserve significant historic sites and properties with agencies of the Federal Government.

(9) Offer and pay rewards for the arrest and conviction of any person who has violated any of the state heritage or historic preservation laws. No reward shall exceed $100 for a single arrest and conviction. [1983 c.231 §4]

358.687 Reports. (1) The administrator shall report biennially to the Governor and to the Legislative Assembly on committee activities during the preceding biennium. The administrator shall make any additional reports required by the Governor or the Legislative Assembly.

(2) Reports required under subsection (1) of this section shall be in the form and contain the information the administrator considers appropriate, and shall contain the information required by the Governor or the Legislative Assembly. [1983 c.231 §2]

358.690 Oregon Property Management Account. (1) The Oregon Property Management Account is established as a separate account in the State Highway Fund established in ORS 366.505. Except as otherwise provided by law, all moneys received by the State Advisory Committee on Historic Preservation under law shall be paid into the State Treasury and credited to the account. All moneys in the account and all income, interest and earnings from the moneys in the account are appropriated

continuously to the committee to carry out the state heritage and historic preservation laws.

(2) The committee shall keep a record of all moneys deposited in the Oregon Property Management Account. The record shall indicate by separate cumulative accounts the source from which the moneys are derived and the individual activity or program against which each withdrawal is charged.

(3) Moneys in the Oregon Property Management Account shall not be subject to the appropriations provided for in ORS 366.525 to 366.540 and 366.785 to 366.820.

(4) Moneys in the Oregon Property Management Account shall be accounted for separately and shall be stated separately in the Parks and Recreation Division biennial budget. [1983 c.231 §5]

GRANTS FOR MUSEUMS

358.710 "Museum" defined. As used in ORS 358.710 to 358.770, unless the context requires otherwise, "museum" means a public institution or private nonprofit Oregon corporation primarily devoted to the acquisition and public exhibition of specimens, artifacts, articles, documents and other things which relate to history, anthropology, archaeology, science or art and have historical significance. [1965 c.572 §2; 1973 c.757 §9; 1981 c.165 §1]

358.720 Purpose of ORS 358.710 to 358.770. It is the purpose of ORS 358.710 to 358.770 to encourage the maintenance, expansion and improvement of museum services for the education and enjoyment of the people throughout the state. [1965 c.572 §3; 1981 c.165 §2]

358.730 Duties of Department of Transportation relating to museums. In addition to the other duties of the Tourism Division of the Economic Development Department, the division shall:

(1) Make annual matching fund grants to museums for maintaining, expanding or improving museum services;

(2) Request the Oregon Historical Society, with the assistance of the Oregon Museums Association, to establish minimum standards for museum services;

(3) Request the Oregon Historical Society, with the assistance of the Oregon Museums Association, to determine the eligibility for and the amounts of matching fund grants;

(4) Advise, upon request, museum governing bodies, county governing bodies, city governing bodies and interested citizens of the availability of matching fund grants; and

(5) Adopt, with advice of the Oregon Historical Society and the Oregon Museums Association, rules to carry out the grant program under ORS 358.710 to 358.770. [1965 c.572 §4; 1981 c.165 §3; 1983 c.324 §14]

358.740 Qualifications for grant. To qualify for a matching fund grant a museum shall:

(1) Be operated in accordance with minimum standards for museum services established by the Oregon Historical Society with the assistance of the Oregon Museums Association;

(2) Be in operation for a period of two years;

(3) Provide museum services to the public at designated and reasonable hours and place; and

(4) Have a responsible, competent attendant on duty when museum services are provided to the public. [1965 c.572 §§5, 10; 1981 c.165 §4]

358.750 Procedure to obtain grant. To obtain a matching fund grant authorized by ORS 358.730, the museum governing body shall apply to the Tourism Division of the Economic Development Department. The application shall:

(1) Include a detailed statement of the amount and source of funds expended for museum services during the preceding year;

(2) Include a report of museum services provided during the preceding year;

(3) Include or have attached the recommendations of the Oregon Historical Society and the Oregon Museums Association relating to museum services of the applicant; and

(4) Include such other information as may be required by the division. [1965 c.572 §6; 1981 c.165 §5; 1983 c.324 §15]

358.760 Expenditure of matching grant funds. (1) Moneys appropriated to the Tourism Division of the Economic Development Department for matching grant funds under ORS 358.710 to 358.770 shall be apportioned to museums based on recommendations of the Oregon Historical Society and the Oregon Museums Association.

(2) Upon approval of the request of a museum governing body, the Tourism Division shall enter into a matching fund relationship with the museum governing body to reimburse the museum governing body for funds used during the preceding year to provide museum services.

(3) The matching fund grant authorized by ORS 358.730 shall be up to 50 percent of the amount expended for museum services during

the preceding year, but the amount shall not exceed $5,000 for any year.

(4) Money received by a museum governing board from the state matching fund grant for museums shall not be considered a portion of the contribution of the museum for the purpose of determining the amount for which the museum is eligible in the ensuing year. [1965 c.572 §7; 1981 c.165 §6; 1983 c.324 §16]

358.770 Duties of Oregon Historical Society. (1) The Oregon Historical Society shall advise the Department of Transportation on acquisition, development and operation of historic places.

(2) The Department of Transportation shall consider the advice of the Oregon Historical Society, particularly advice regarding the designation of historic buildings, sites and other historic places. [1965 c.572 §9; 1981 c.165 §7]

SCENIC WATERWAYS
ORS 390.805 - ORS 390.925

SCENIC WATERWAYS

390.805 Definitions for ORS 390.805 to 390.925. As used in ORS 390.805 to 390.925, unless the context requires otherwise:

(1) "Department" means the Department of Transportation.

(2) "Scenic waterway" means Waldo Lake, river or segment of river that has been designated as such in accordance with ORS 390.805 to 390.925 or any subsequent Act, and includes related adjacent land.

(3) "Related adjacent land" means all land within one-fourth of one mile of the bank on the side of Waldo Lake, river or segment of river within a scenic waterway, except land that, in the department's judgment, does not affect the view from the waters within a scenic waterway.

(4) "Scenic easement" means the right to control the use of related adjacent land, including air space above such land, for the purpose of protecting the scenic view from waters within a scenic waterway; but such control does not affect, without the owner's consent, any regular use exercised prior to the acquisition of the easement, and the landowner retains the right to uses of the land not specifically restricted by the easement. [1971 c.1 §2; 1981 c.787 §55; 1983 c.334 §1; 1983 c.642 §10]

390.815 Policy; establishment of system. The people of Oregon find that many of the free-flowing rivers of Oregon and Waldo Lake and lands adjacent to such lake and rivers possess outstanding scenic, fish, wildlife, geological, botanical, historic, archeologic, and outdoor recreation values of present and future benefit to the public. The people of Oregon also find that the policy of permitting construction of dams and other impoundment facilities at appropriate sections of the rivers of Oregon and Waldo Lake needs to be complemented by a policy that would preserve Waldo Lake and selected rivers or sections thereof in a free-flowing condition and would protect and preserve the natural setting and water quality of the lake and such rivers and fulfill other conservation purposes. It is therefore the policy of Oregon to preserve for the benefit of the public Waldo Lake and selected parts of the state's free-flowing rivers. For these purposes there is established an Oregon Scenic Waterways System to be composed of areas designated in accordance with ORS 390.805 to 390.925 and any subsequent Acts. [1971 c.1 §1; 1983 c.334 §2]

390.825 Designated scenic waterways. The following lakes or rivers, or segments of rivers, and related adjacent land, are designated as scenic waterways:

(1) The segment of the Rogue River extending from the confluence with the Applegate River downstream a distance of approximately 88 miles to Lobster Creek Bridge.

(2) The segment of the Illinois River from the confluence with Deer Creek downstream a distance of approximately 46 miles to its confluence with the Rogue River.

(3) The segment of the Deschutes River from immediately below the existing Pelton reregulating dam downstream approximately 100

miles to its confluence with the Columbia River, excluding the City of Maupin as its boundaries are constituted on October 4, 1977.

(4) The entire Minam River from Minam Lake downstream a distance of approximately 45 miles to its confluence with the Wallowa River.

(5) The segment of the South Fork Owyhee River in Malheur County from the Oregon-Idaho border downstream approximately 25 miles to Three Forks where the main stem of the Owyhee River is formed, and the segment of the main stem Owyhee River from Crooked Creek (six miles below Rome) downstream a distance of approximately 45 miles to the mouth of Birch Creek.

(6) The segment of the main stem of the John Day River from Service Creek Bridge (at river mile 157) downstream 147 miles to Tumwater Falls (at river mile 10).

(7) The segment of the Clackamas River from the River Mill Dam below Estacada downstream approximately 12 miles to the bridge at Carver, Oregon.

(8) Waldo Lake in Lane County and the segment of the North Fork of the Middle Fork of the Willamette River from Waldo Lake to a point one mile upstream from the railroad bridge that is near the town of Westfir. [1971 c.1 §3; 1975 c.612 §1; 1977 c.671 §1; 1983 c.334 §3]

390.835 Highest and best use of waters within scenic waterways; authority of State Fish and Wildlife Commission, Water Resources Director, Division of State Lands and State Land Board. (1) It is declared that the highest and best uses of the waters within scenic waterways are recreation, fish and wildlife uses. The free-flowing character of these waters shall be maintained in quantities necessary for recreation, fish and wildlife uses. No dam, or reservoir, or other water impoundment facility shall be constructed or placer mining permitted on waters within scenic waterways. No water diversion facility shall be constructed or used except by right previously established or as permitted by the Water Resources Director, upon a finding that such diversion is necessary to uses designated in ORS 536.310 (12), and in a manner consistent with the policies set forth under ORS 390.805 to 390.925. The Water Resources Director shall administer and enforce the provisions of this subsection.

(2) Filling of the beds or removal of material from or other alteration of the beds or banks of scenic waterways shall be prohibited, except as permitted by the Director of the Division of State Lands upon a finding that such activity would be consistent with the policies set forth under ORS 390.805 to 390.925 for scenic waterways, and approved by the State Land Board and in a manner consistent with the policies set forth under ORS 541.605 to 541.625 and 541.630 to 541.660 for removal of material from the beds and banks and filling of any waters of this state. The Director of the Division of State Lands shall administer and enforce the provisions of this subsection.

(3) Nothing in ORS 390.805 to 390.925 affects the authority of the State Fish and Wildlife Commission to construct facilities or make improvements to facilitate the passage or propagation of fish or to exercise other responsibilities in managing fish and wildlife resources. Nothing in ORS 390.805 to 390.925 affects the authority of the Water Resources Director to construct and maintain stream gauge stations and other facilities related to his duties in administration of the water laws.

(4) The Water Policy Review Board shall carry out its responsibilities under ORS 536.210 to 536.590 with respect to the waters within scenic waterways in conformity with the provisions of this section. [1971 c.1 §4; 1973 c.756 §1; 1977 c.671 §2]

390.845 Functions of the department; use of adjacent lands. (1) Except as provided in ORS 390.835, scenic waterways shall be administered by the department, each in such manner as to protect and enhance the values which caused such scenic waterway to be included in the system. In such administration primary emphasis shall be given to protecting the esthetic, scenic, fish and wildlife, scientific and recreation features, based on the special attributes of each area.

(2) After consultation with the State Board of Forestry, the State Department of Agriculture and the affected counties and with the concurrence of the Water Policy Review Board, the department shall adopt rules governing the management of related adjacent land. Such rules shall be adopted in accordance with ORS 183.310 to 183.550. Such rules shall reflect management principles, standards and plans applicable to scenic waterways, their shore lines and related adjacent land and, if necessary, establish varying intensities of protection or development based on special attributes of each area. Such management principles, standards and plans shall protect or enhance the esthetic and scenic values of the scenic waterways and permit compatible agricultural, forestry and other land uses. Specifically, and not in limitation of the foregoing, such rules shall provide that:

(a) No roads, railroads or utilities shall be constructed within any scenic waterway except where necessary to serve the permissible uses, as defined in subsection (2) of this section and in the rules of the department, of the related adjacent land or unless department approval of such use is obtained as provided in subsection (4) or (5) of this section. The department wherever practicable shall require the sharing of land and air space by such roads, railroads and utilities. All permissible roads, railroads and utilities shall be located in such a manner as to minimize the disturbance of the natural beauty of a scenic waterway;

(b) Forest crops shall be harvested in such manner as to maintain as nearly as reasonably is practicable the natural beauty of the scenic waterway;

(c) Occupants of related adjacent land shall avoid pollution of waters within a scenic waterway;

(d) The surface of related adjacent land shall not be disturbed for prospecting or mining unless the department's approval is obtained under subsection (4) or (5) of this section; and

(e) Unless department approval of the proposed use is obtained under subsection (4) or (5) of this section, no commercial, business or industrial structures or buildings other than structures or buildings erected in connection with an existing use shall be erected or placed on related adjacent land. All structures and buildings erected or placed on such land shall be in harmony with the natural beauty of the scenic waterway and shall be placed a sufficient distance from other structures or buildings so as not to impair substantially such natural beauty. No signs or other forms of outdoor advertising that are visible from waters within a scenic waterway shall be constructed or maintained.

(3) No person shall put related adjacent land to uses that violate ORS 390.805 to 390.925 or the rules of the department adopted under ORS 390.805 to 390.925 or to uses to which the land was not being put before December 3, 1970, or engage in the cutting of trees, or mining, or prospecting on such lands or construct roads, railroads, utilities, buildings or other structures on such lands, unless the owner of the land has given to the department written notice of such proposed use at least one year prior thereto and has submitted to the department with the notice a specific and detailed description of such proposed use or has entered into agreement for such use with the department under subsection (5) of this section. The owner may, however, act in emergencies without the notice required by ORS 390.805 to 390.925 when necessary in the interests of public safety.

(4) Upon receipt of the written notice provided in subsection (3) of this section, the department shall first determine whether in its judgment the proposed use would impair substantially the natural beauty of a scenic waterway. If the department determines that the proposal, if put into effect, would not impair substantially the natural beauty of the scenic waterway, the department shall notify in writing the owner of the related adjacent land that the owner may immediately proceed with the proposed use as described to the department. If the department determines that the proposal, if put into effect, would impair substantially the natural beauty of the scenic waterway, the department shall notify in writing the owner of the related adjacent land of such determination and no steps shall be taken to carry out such proposal until at least one year after the original notice to the department. During such period:

(a) The department and the owner of the land involved may agree upon modifications or alterations of the proposal so that implementation thereof would not in the judgment of the department impair substantially the natural beauty of the scenic waterway; or

(b) The department may acquire by purchase, gift or exchange, the land involved or interests therein, including scenic easements, for the purpose of preserving the natural beauty of the scenic waterway.

(5) The department, upon written request from an owner of related adjacent land, shall enter into negotiations and endeavor to reach agreement with such owner establishing for the use of such land a plan that would not impair substantially the natural beauty of the scenic waterway. At the time of such request for negotiations, the owner may submit a plan in writing setting forth in detail proposed uses. Three months after the owner makes such a request for negotiations with respect to use of land, either the department or the owner may give written notice that the negotiations are terminated without agreement. Nine months after the notice of termination of negotiations the owner may use land in conformity with any specific written plan submitted by the owner prior to or during negotiations. In the event the department and the owner reach agreement establishing a plan for land use, such agreement is terminable upon at least one year's written notice by either the department or the owner.

(6) With the concurrence of the Water Policy Review Board, the department may institute

condemnation proceedings and by condemnation acquire related adjacent land:

(a) At any time subsequent to nine months after the receipt of notice of a proposal for the use of such land that the department determines would, if carried out, impair substantially the natural beauty of a scenic waterway unless the department and the owner of such land have entered into an agreement as contemplated by subsection (4) or (5) of this section or the owner shall have notified the department of the abandonment of such proposal; or

(b) At any time related adjacent land is used in a manner violating ORS 390.805 to 390.925, the rules of the department or any agreement entered into by the department pursuant to subsection (4) or (5) of this section; or

(c) At any time related adjacent land is used in a manner which, in the judgment of the department, impairs substantially the natural beauty of a scenic waterway, if the department has not been given at least one year's advance written notice of such use and if there is not in effect department approval of such use pursuant to subsection (4) or (5) of this section.

(7) In such condemnation the owner of the land shall not receive any award for the value of any structure, utility, road or other improvement constructed or erected upon the land after December 3, 1970, unless the department has received written notice of such proposed structure, utility, road or other improvement at least one year prior to commencement of construction or erection of such structure, utility, road or other improvement or unless the department has given approval for such improvement under subsection (4) or (5) of this section. If the person owned the land on December 3, 1970, and for a continuous period of not less than two years immediately prior thereto, the person shall receive no less for the land than its value on December 3, 1970. The department shall not acquire by condemnation a scenic easement in land. When the department acquires any related adjacent land that is located between a lake or river and other land that is owned by a person having the right to the beneficial use of waters in the river by virtue of ownership of the other land:

(a) The right to the beneficial use of such waters shall not be affected by such condemnation; and

(b) The owner of the other land shall retain a right of access to the lake or river necessary to use, store or divert such waters as the owner has a right to use, consistent with concurrent use of the land so condemned as a part of the Oregon Scenic Waterways System.

(8) Any owner of related adjacent land, upon written request to the department, shall be provided copies of rules then in effect or thereafter adopted by the department pursuant to ORS 390.805 to 390.925.

(9) The department shall furnish to any member of the public upon written request and at expense of the member a copy of any notice filed pursuant to subsection (3) of this section.

(10) If a scenic waterway contains lands or interests therein owned by or under the jurisdiction of an Indian tribe, the United States, another state agency or local governmental agency, the department may enter into agreement with the tribe or the federal, state or local agency for the administration of such lands or interests therein in furtherance of the purposes of ORS 390.805 to 390.925. [1971 c.1 §5; 1971 c.459 §1; 1973 c.756 §2; 1981 c.236 §3; 1983 c.334 §4]

Note: Sections 2, 3 and 37, chapter 798, Oregon Laws 1981, provide:

Sec. 2. (1) The department shall establish, by rule, a system for issuing passes necessary to comply with the requirements under section 3 of this 1981 Act. The department shall establish a reasonable fee for issuance of a pass under this section. The department may establish any form of proof of payment of the user fees that it deems appropriate.

(2) The system for issuance of passes established by the department under this section may include issuance of the passes by governmental entities or private persons who have entered into appropriate agreements with the department for issuance of the passes. Agreements under this subsection may include, but are not limited to, terms providing for locations for the collection of fees, methods the department determines appropriate to assure payment of moneys collected and provisions for the distribution of river-user information.

(3) The department shall issue, without charge, annual passes to comply with the requirements under section 3 of this 1981 Act to persons who own ranch, farm or residential property immediately abutting those portions of the Deschutes River designated as scenic waterways under ORS 390.825 and to members of the immediate family of such persons. This subsection does not authorize the issuance without charge of passes to persons holding less than a majority interest in a firm, corporation or cooperative organization which owns land immediately abutting the Deschutes River designated as scenic waterways under ORS 390.825.

(4) Moneys collected under this section shall be deposited in the separate account established for the Parks and Recreation Division under ORS 366.512 and, subject to the limitations under subsection (5) of this section, are continually appropriated to that division to be used:

(a) For operation of the pass system established under this section;

(b) For providing river-user oriented law enforcement services;

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(c) For providing river recreation information and education;

(d) For developing and maintaining river oriented recreation facilities; and

(e) For any other purposes the department considers appropriate for the maintenance, enhancement or protection of the natural and scenic beauty of the scenic waterway consistent with ORS 390.805 to 390.925.

(5) The use of moneys for purposes described under subsection (4) of this section is limited to the performance of those purposes for areas of the Deschutes River designated as scenic waterways under ORS 390.825.

Sec. 3. (1) Unless the person has an appropriate pass issued under section 2 of this 1981 Act, no person shall launch, operate or ride in any boat or engage in any camping, fishing or other activity in connection with being transported by a boat on those portions of the Deschutes River designated as scenic waterways under ORS 390.825.

(2) This section does not appy to:

(a) Peace officers, members or employes of a governmental body or their agents while engaged in the discharge of official duties; or

(b) Any member of the Confederated Tribes of the Warm Springs Indian Reservation.

(3) A person who violates this section commits a Class B parks and recreation infraction.

Sec. 37. Sections 2 and 3 of this Act are repealed on January 1, 1986.

390.855 Designation of additional scenic waterways. The department shall undertake a continuing study and submit periodic reports to the Governor, with the concurrence of the Water Policy Review Board, recommending the designation of additional rivers or segments of rivers and related adjacent land by the Governor as scenic waterways subject to the provisions of ORS 390.805 to 390.925. Consistent with such recommendation, the Governor may designate any river or segment of a river and related adjacent land as a scenic waterway subject to the provisions of ORS 390.805 to 390.925. The department shall consult with the State Fish and Wildlife Commission, the State Department of Agriculture, the Environmental Quality Commission, the Division of State Lands, and such other persons or agencies as it considers appropriate. The Department of Transportation shall conduct hearings in the counties in which the proposed additional rivers or segments of rivers are located. The following criteria shall be considered in making such report:

(1) The river or segment of river is relatively free-flowing and the scene as viewed from the river and related adjacent land is pleasing, whether primitive or rural-pastoral, or these conditions are restorable.

(2) The river or segment of river and its setting possess natural and recreation values of outstanding quality.

(3) The river or segment of river and its setting are large enough to sustain substantial recreation use and to accommodate existing uses without undue impairment of the natural values of the resource or quality of the recreation experience. [1971 c.1 §6]

390.865 Authority of legislature over designation of additional scenic waterways. The designation of a river or segment of a river and related adjacent land, pursuant to ORS 390.855, shall not become effective until the day following the adjournment sine die of the regular session of the Legislative Assembly next following the date of the designation or that was in session when the designation was made. The Legislative Assembly by joint resolution may disapprove any such designation or a part thereof, and in that event the designation, or part thereof so disapproved, shall not become effective. [1971 c.1 §7]

390.875 Transfer of public lands in scenic waterways to department; administration of nontransferred lands. Any public land within or adjacent to a scenic waterway, with the consent of the governing body having jurisdiction thereof, may be transferred to the jurisdiction of the department with or without compensation. Any land so transferred shall become state recreational land and shall be administered as a part of the scenic waterway. Any such land within a scenic waterway which is not transferred to the jurisdiction of the department, to the fullest extent consistent with the purposes for which the land is held, shall be administered by the body having jurisdiction thereof in accordance with the provisions of ORS 390.805 to 390.925. [1971 c.1 §8]

390.885 Exchange of property within scenic waterway for property outside waterway. In acquiring related adjacent land by exchange, the department may accept title to any property within a scenic waterway, and in exchange therefor, may convey to the grantor of such property any property under its jurisdiction that the department is not otherwise restricted from exchanging. In so far as practicable, the properties so exchanged shall be of approximately equal fair market value. If they are not of approximately equal fair market value, the department may accept cash or property from, or pay cash or grant property to, the grantor in

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order to equalize the values of the properties exchanged. [1971 c.1 §9]

390.895 Use of federal funds. In addition to State of Oregon funds available for the purposes of ORS 390.805 to 390.925, the department shall use such portion of moneys made available to it by the Bureau of Outdoor Recreation and other federal agencies, including matching funds, as the department determines are necessary and available to carry out the purposes of ORS 390.805 to 390.925. [1971 c.1 §10]

390.905 Effect of ORS 390.805 to 390.925 on other state agencies. Nothing in ORS 390.805 to 390.925 affects the jurisdiction or responsibility of other state agencies with respect to boating, fishing, hunting, water pollution, health or fire control; except that such state agencies shall endeavor to perform their responsibilities in a manner consistent with the purposes of ORS 390.805 to 390.925. [1971 c.1 §11]

390.910 Intergovernmental cooperation; county representative on management advisory committee. In carrying out the provisions of ORS 390.805 to 390.925, the department may enter into intergovernmental agreements to form committees to advise the various governmental agencies involved regarding management of the scenic waterways. Each such agreement must provide for membership on the committee of a representative of one of the governing bodies of the counties through which the scenic waterway flows. The county representative shall be chosen by the Governor from among those individuals recommended to the Governor by the county governing bodies. [1981 c.236 §2]

390.915 Determination of value of scenic easement for tax purposes; easement exempt. For ad valorem tax purposes, real property that is subject to a scenic easement shall be valued at its true cash value, less any reduction in value caused by the scenic easement, and assessed in accordance with ORS 308.232. The easement shall be exempt from assessment and taxation the same as any other property owned by the state. [1971 c.1 §12; 1981 c.804 §99]

390.925 Enforcement. In addition to any other penalties provided by law for violation of ORS 390.805 to 390.925 or rules adopted thereunder, the department is vested with power to obtain injunctions and other appropriate relief against violations of any provisions of ORS 390.805 to 390.925 and any rules adopted under ORS 390.805 to 390.925 and agreements made under ORS 390.805 to 390.925. [1971 c.1 §13; 1981 c.798 §6]

COLUMBIA RIVER GORGE
ORS 390.410 - ORS 390.460

COLUMBIA RIVER GORGE

390.410 Definitions for ORS 390.410 to 390.460. As used in ORS 390.410 to 390.460, unless the context requires otherwise, "commission" means the Columbia River Gorge Commission. [Formerly 358.610]

390.415 Declaration of policy. The Legislative Assembly hereby declares it is the public policy of the State of Oregon to maintain the scenic splendor of the Columbia River Gorge and in furtherance thereof:

(1) To protect and enhance the scenic and other unique qualities of the Columbia River Gorge for public use and enjoyment;

(2) To preserve and protect areas within the Columbia River Gorge that are of significant geologic and ecologic interest for scientific study and public education;

(3) To preserve and restore historical and archaeological sites, structures, facilities and

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objects on lands adjacent to the Columbia River; and

(4) To preserve and maintain the Columbia River Gorge as a major transportation corridor. [1977 c.482 §2]

390.420 Columbia River Gorge Commission; compensation and expenses. (1) For the purpose of furthering the public policy of this state relating to the Columbia River Gorge, there hereby is created the Columbia River Gorge Commission. The commission shall consist of five members who are residents of this state and shall be appointed by the Governor on a nonpartisan basis. In making the appointments under this subsection the Governor shall select one member from Hood River County, one member from Multnomah County, one member from Wasco County and the remaining members from the state at large. Except for the members first appointed, each member of the commission shall hold office for a term of four years commencing on April 1 of the year in which he is appointed. Vacancies shall be filled for the unexpired term in the same manner as other appointments are made.

(2) The first members of the commission shall be appointed for the following terms:

(a) One member for two years.

(b) Two members for three years.

(c) Two members for four years.

(3) Members are entitled to compensation and expenses as provided in ORS 292.495. [Formerly 358.615; 1969 c.314 §31; 1977 c.482 §4]

390.430 General duties and powers of gorge commission. (1) The commission has the following duties and powers:

(a) To acquire and dispose of land in the name of the state by purchase, exchange, transfer, gift or devise.

(b) To enter into such contracts as are necessary to carry out the provisions of ORS 390.410 to 390.460.

(c) To assist and cooperate with other agencies and political subdivisions of the state, state agencies, the State of Washington, the Federal Government, special purpose districts, private organizations and individuals to the extent necessary to carry out the provisions of ORS 390.410 to 390.450.

(2) In carrying out the functions provided in subsection (1) of this section, the commission shall serve as an advisory body to interested local, state and federal agencies acting within the scope of their comprehensive land use planning and other responsibilities. [Formerly 358.620; 1977 c.482 §5]

390.440 [Formerly 358.625, repealed by 1977 c.482 §6]

390.450 Disposition of moneys received by gorge commission; Columbia River Gorge Fund. All moneys from whatever source received by the commission, including moneys received by gift, bequest or contribution, shall be paid into the State Treasury for deposit to the credit of the Columbia River Gorge Fund which fund hereby is created. Notwithstanding the provisions of ORS 291.238, the moneys placed in this fund are appropriated continuously for the purposes set forth in ORS 390.410 to 390.460. The expenditures of the commission shall be made from this fund upon vouchers approved by the commission. Moneys received from gifts may be expended in accordance with the terms thereof. [Formerly 358.630]

390.460 Columbia River Gorge Boundaries. The Columbia River Gorge includes all islands and portions thereof lying within the Oregon portion of the Columbia River, as well as the mainland portion of the Oregon side of the Columbia River Gorge, beginning at a point where the projected center line of the Sandy River intersects the Oregon-Washington boundary, thence east along said boundary to the point of intersection with the east boundary of Wasco County in township 2 north, range 15 east, Willamette Meridian and Base Line, proceed south along the Wasco County boundary (Deschutes River) to the point where it intersects the east-west center line of section 26; thence west to the center, section 27; thence north to the north quarter corner, section 27; thence west to the northwest corner, section 27; thence north to the west quarter corner, section 22; thence west to the center of section 21; thence north to the north quarter corner, section 21; thence west to the northwest corner, section 21; thence south to the west quarter corner, section 21; thence west to the center of section 21, township 2 north, range 14 east; thence south to the south quarter corner, section 21; thence west to the southwest corner, section 21; thence south to the east quarter corner, section 29; thence west to the center of section 29; thence south to the south quarter corner, section 29; thence west to the southwest corner, section 29; thence south to the southeast corner, section 31; thence west to the south

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quarter corner, section 31; thence south to the south quarter corner, section 6, township 1 north, range 14 east; thence west to the north sixteenth corner of the northwest quarter, section 7; thence south to the center sixteenth of the northwest quarter, section 7; thence west to the east sixteenth corner of the northwest quarter, section 12, township 1 north, range 13 east; thence south to the east sixteenth corner of the southwest quarter, section 12; thence west to the east sixteenth corner of the southeast quarter, section 9; thence north to the east quarter corner, section 9; thence west to the center of section 9; thence north to the north quarter corner, section 9; thence west to where it intersects donation land claim 42; thence north to the northeast corner, donation land claim 42; thence west to the point of intersection with the north-south center line, section 5; thence north to the center of section 5; thence west to the west quarter corner, section 5; thence north to the northwest corner, section 5; thence west to the southeast corner, section 31, township 2 north, range 13 east; thence north to the northeast corner, section 31; thence west to the north quarter corner, section 31; thence north to the north quarter corner, section 30; thence west to the southwest corner, section 19; thence north to the west quarter corner, section 19; thence west to the center of section 24, township 2 north, range 12 east; thence north to the center of section 13; thence west to the west quarter of section 13; thence north to the northwest corner, section 13; thence west to the south quarter corner, section 9; thence north to the center of section 9; thence west to the center of section 8; thence north to the north quarter corner, section 8; thence west to the north quarter corner, section 12, township 2 north, range 11 east; thence south to the center of section 12; thence west to the center of section 9; thence north to the center of section 4; thence west to the west quarter corner, section 4; thence north to the northwest corner, section 4; thence west to the northwest corner, section 5; thence north to the east quarter corner, section 31, township 3 north, range 11 east; thence west to the west quarter corner, section 31; thence north to the northeast corner, section 36, township 3 north, range 10 east; thence west to the northwest corner, section 34; thence south to the west quarter corner, section 34; thence west to the west quarter corner, section 33; thence south to the southwest corner, section 33, thence west to the southwest corner, section 32; thence south to the east quarter corner, section 6, township 2 north, range 10 east; thence west to the west quarter corner, section 6; thence south to the east quarter corner, section 1, township 2 north, range 9 east; thence west to the center of section 1; thence south to the south quarter corner, section 1; thence west to the south quarter corner, section 2; thence north to the center of section 2; thence west to the west quarter corner, section 2; thence south to the center of section 10; thence west to the center of section 9; thence south to the south quarter corner, section 9; thence west to the southwest corner, section 9; thence north to the west quarter corner, section 9; thence west to the center of section 8; thence south to the south quarter corner, section 8; thence west to the southwest corner, section 8; thence south to the east quarter corner, section 18; thence west to the center of section 18; thence north to the center of section 7; thence west to the west quarter corner, section 7; thence south to the southwest corner, section 7; thence west to the north quarter corner, section 13, township 2 north, range 8 east; thence south to the center of section 13; thence west to the west quarter corner, section 13; thence north to the west quarter corner, section 12; thence west to the center of section 11; thence south to the south quarter corner, section 14; thence west to the southwest corner, section 15; thence north to the east quarter corner, section 16; thence west to the center of section 16; thence south to the south quarter corner, section 16; thence west to the southwest corner, section 16; thence south to the east quarter corner, section 20; thence west to the center of section 20; thence south to the south quarter corner, section 20; thence west to the southwest corner, section 20, thence south to the southeast corner, section 30; thence west to the southwest corner, section 30; thence north to the east quarter corner, section 25, township 2 north, range 7 east; thence west to the west quarter corner, section 25; thence south to the east quarter corner, section 35; thence west to the center of section 35; thence south to the south quarter corner, section 35; thence west to the northwest corner, section 2, township 1 north, range 7 east; thence south to the west quarter corner, section 11; thence west to the center of section 9; thence north to the north quarter corner, section 9; thence west to the northwest corner, section 8; thence south to the west quarter corner, section 8; thence west to the center of section 11, township 1 north, range 6 east; thence south to the center of section 14; thence west to the center of section

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15; thence south to the north quarter corner, section 22; thence east to the northeast corner, section 22; thence south to the east quarter corner, section 22; thence west to the center of section 22; thence south to the south quarter corner, section 22; thence west to the southwest corner of section 22; thence north to the west quarter corner, section 22; thence west to the center of section 21; thence north to the center of section 16; thence west to the west quarter corner, section 16; thence north to the northwest corner, section 16; thence west to the north quarter corner, section 17; thence south to the center of section 17; thence east to the east quarter corner, section 17; thence south to the southeast corner, section 17; thence west to the north quarter corner, section 24, township 1 north, range 5 east; thence south to the center of section 24; thence west to the center of section 23; thence south to the south quarter corner, section 23; thence east to the northeast corner of section 26; thence south to the east quarter corner, section 26; thence east to the center of section 25; thence south to the center of section 36; thence west to the west quarter corner, section 32; thence south to the southeast corner, section 31; thence west to the south quarter corner, section 31; thence north to the center of section 31; thence west to the west quarter corner, section 33, township 1 north, range 4 east; thence north to the northeast corner, section 32; thence west to the south quarter corner, section 30; thence north to the center of section 30; thence west to the center line of the Sandy River; thence northward up the center line of the Sandy River to the point of beginning. [1977 c.482 §3]

CONSERVATION EASEMENTS
ORS 271.715 - ORS 271.795

CONSERVATION EASEMENTS

271.710 [1967 c.318 §1; repealed by 1983 c.642 §11]

271.715 Definitions for ORS 271.715 to 271.795. As used in ORS 271.715 to 271.795 and 390.805, unless the context otherwise requires:

(1) "Conservation easement" means a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic, or open space values of real property, assuring its availability for agricultural, forest, recreational, or open space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property.

(2) "Holder" means:

(a) The state or any county, city or park and recreation district acting alone or in cooperation with any federal or state agency, public corporation or political subdivision; or

(b) A charitable corporation, charitable association, charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic, or open space values of real property, assuring the availability of real property for agricultural, forest, recreational, or open space use, protecting natural resources, maintaining or enhancing air or water quality, or

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preserving the historical, architectural, archaeological, or cultural aspects of real property.

(3) "Third-party right of enforcement" means a right provided in a conservation easement to enforce any of its terms granted to a governmental body, charitable corporation, charitable association or charitable trust, which, although eligible to be a holder, is not a holder. [1983 c.642 §1]

271.720 [1967 c.318 §2; 1975 c.511 §1; 1981 c.787 §40; repealed by 1983 c.642 §11]

271.725 Acquisition and creation of conservation easement. (1) The state, any county, city or park and recreation district may acquire by purchase, agreement or donation, but not by exercise of the power of eminent domain, unless specifically authorized by law, conservation easements in any area within their respective jurisdictions wherever and to the extent that a state agency or the governing body of the county, city or park and recreation district determines that the acquisition will be in the public interest.

(2) Except as otherwise provided in ORS 271.715 to 271.795 and 390.805, a conservation easement may be created, conveyed, recorded, assigned, released, modified, terminated, or otherwise altered or affected in the same manner as other easements.

(3) No right or duty in favor of or against a holder and no right in favor of a person having a third-party right of enforcement arises under a conservation easement before its acceptance by the holder and recordation of the acceptance.

(4) Except as provided in ORS 271.755 (2) a conservation easement is unlimited in duration unless the instrument creating it otherwise provides.

(5) An interest in real property in existence at the time a conservation easement is created is not impaired by it unless the owner of the interest is a party to the conservation easement or consents to it. [1983 c.642 §2]

271.730 [1967 c.318 §3; 1981 c.787 §41; repealed by 1983 c.642 §11]

271.735 Hearing; notice. (1) Before the acquisition of conservation easements, the state agency, county, city, or park and recreation district considering acquisition of such easements shall hold one or more public hearings on the proposal and the reasons therefor. The hearings shall be held in the community where the easements would be located and all interested persons, including representatives of other governmental agencies, shall have the right to appear and a reasonable opportunity to be heard.

(2) Notice of the hearing shall be published at least twice, once not less than 12 days and once not less than five days, prior to the hearing in a newspaper of general circulation in the community. The notice may also be published by broadcasting or telecasting generally in the community.

(3) At least 30 days prior to the hearing, the state agency shall mail notice of the hearing to the governing body of each county, city and other governmental agency having jurisdiction in the area of the proposed easements.

(4) This section does not apply to conservation easements acquired pursuant to ORS 390.110, 390.310 to 390.338 and 390.805 to 390.925. [1983 c.642 §9]

271.740 [1967 c.318 §4; 1981 c.787 §42; repealed by 1983 c.642 §11]

271.745 Validity of conservation easement. A conservation easement is valid even though:

(1) It is not appurtenant to an interest in real property;

(2) It can be or has been assigned to another holder;

(3) It is not of a character that has been recognized traditionally at common law;

(4) It imposes a negative burden;

(5) It imposes affirmative obligations upon the owner of an interest in the burdened property or upon the holder;

(6) The benefit does not touch or concern real property; or

(7) There is no privity of estate or of contract. [1983 c.642 §4]

271.750 [1967 c.318 §5; 1975 c.511 §2; 1981 c.787 §43; repealed by 1983 c.642 §11]

271.755 Action affecting conservation easement; standing to bring action. (1) An action affecting a conservation easement may be brought by:

(a) An owner of an interest in real property burdened by the easement;

(b) A holder of the easement;

(c) A person having a third-party right of enforcement; or

(d) A person authorized by other law.

(2) ORS 271.715 to 271.795 and 390.805 do not affect the power of a court to modify or terminate a conservation easement in accordance with the principles of law and equity. [1983 c.642 §3]

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271.765 Applicability. (1) ORS 271.715 to 271.795 and 390.805 apply to any interest created after October 15, 1983, which complies with ORS 271.715 to 271.795 and 390.805, whether designated as a conservation easement or as a covenant, equitable servitude, restriction, easement, or otherwise.

(2) ORS 271.715 to 271.795 and 390.805 apply to any interest created before October 15, 1983, if it would have been enforceable had it been created after October 15, 1983, unless retroactive application contravenes the Constitution or laws of this state or the United States.

(3) ORS 271.715 to 271.795 and 390.805 do not invalidate any interest, whether designated as a conservation or preservation easement or as a convenant, equitable servitude, restriction, easement, or otherwise, that is enforceable under other law of this state. [1983 c.642 §5]

271.775 Rules governing conservation easement. The board or officer administering a state agency or the governing body of any county, city or park and recreation district may make and enforce reasonable rules, regulations, orders or ordinances governing the care, use and management of its conservation easements. [1983 c.642 §7]

271.785 Taxation of property subject to conservation easement. For the purpose of taxation, real property that is subject to conservation easements shall be assessed on the basis of the true cash value of the property less any reduction in value caused by the conservation easements. The easements shall be exempt from assessment and taxation the same as any other property owned by the holder. [1983 c.642 §8]

271.795 Construction of Act. ORS 271.715 to 271.795 and 390.805 shall be applied and construed to effectuate the general purpose to make uniform the laws with respect to the subject of ORS 271.715 to 271.795 and 390.805 among states enacting it. [1983 c.642 §6]

ANTIQUITIES ACT OF 1906
16 U.S.C. 431, P.L. 59-209, 34 STAT. 225
and 43 CFR Part 3

SUBCHAPTER LXI—NATIONAL AND INTERNATIONAL MONUMENTS AND MEMORIALS

CROSS REFERENCES

Protection of timber upon national monuments from fire, disease, or insect ravages, see section 594 of this title.

§ 431. National monuments; reservation of lands; relinquishment of private claims

The President of the United States is authorized, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and may reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected. When such objects are situated upon a tract covered by a bona fide unperfected claim or held in private ownership, the tract, or so much thereof as may be necessary for the proper care and management of the object, may be relinquished to the Government, and the Secretary of the Interior is authorized to accept the relinquishment of such tracts in behalf of the Government of the United States.

(June 8, 1906, ch. 3060, § 2, 34 Stat. 225.)

SHORT TITLE

Act June 8, 1906, ch. 3060, 34 Stat. 225, which is classified generally to sections 431, 432 and 433 of this title, is popularly known as the "Antiquities Act of 1906".

NATIONAL MONUMENT COMMISSION

Act Aug. 31, 1954, ch. 1160, §§ 1 to 6, 68 Stat. 1029, provided for a Commission to obtain plans and designs for a useful monument to the nation symbolizing to the United States and the world the ideals of a democracy as embodied in the five freedoms (speech, religion, press, assembly, and petition) and to submit such plans to Congress for legislative authorization after approval by the Secretary of the Interior, the National Capital Planning Commission, and the Commission of Fine Arts. The Commission terminated 30 days after submission of required report which was submitted in 1957 but audit of business was not completed until September 1964.

NATIONAL MONUMENTS ESTABLISHED UNDER PRESIDENTIAL PROCLAMATION

The following National monuments were established under the proclamations listed:

Proc No	National Monument	Citation
4611.	Admiralty Island National Monument, Alaska	93 Stat. 1446
4612.	Aniakchak National Monument, Alaska	93 Stat. 1448
1875.	Arches National Monument, Utah	46 Stat. 2988
1923.	Aztec Ruins National Monument, New Mexico	42 Stat. 2295
1322.	Bandelier National Monument, New Mexico	39 Stat. 1764
4613.	Becharof National Monument, Alaska	93 Stat. 1450
4614.	Bering Land Bridge National Monument, Alaska	93 Stat. 1451
2033.	Black Canyon of the Gunnison National Monument, Colorado	47 Stat. 2558
3443.	Buck Island Reef National Monument, Virgin Islands	76 Stat. 1441
1255.	Cabrillo National Monument, California	38 Stat. 1965
4615.	Cape Krusenstern National Monument, Alaska	93 Stat. 1453
2246.	Capitol Reef National Monument, Utah	50 Stat. 1856
1340.	Capulin Mountain National Monument, New Mexico	39 Stat. 1792
1470.	Casa Grande National Monument, Arizona	40 Stat. 1818
1713.	Castillo de San Marcos National Monument, Florida	43 Stat. 1968
2054.	Cedar Breaks National Monument, Utah	48 Stat. 1705
740.	Chaco Canyon National Monument, New Mexico	35 Stat. 2119
2281.	Channel Islands National Monument, California	52 Stat. 1541
3391.	Chesapeake and Ohio Canal National Monument, Maryland	75 Stat. 1023
1892.	Chiricahua National Monument, Arizona	43 Stat. 1946
1126.	Colorado National Monument, Colorado	37 Stat. 1681
1694.	Craters of the Moon National Monument, Idaho	43 Stat. 1947
4616.	Denali National Monument, Alaska	93 Stat. 1455
1166.	Devil Postpile National Monument, California	37 Stat. 1715
658.	Devils Tower National Monument, Wyoming	34 Stat. 3236
1313.	Dinosaur National Monument, Utah-Colorado	39 Stat. 1752
3148.	Edison Laboratory National Monument, New Jersey	70 Stat. ch. 49
2860.	Effigy Mounds National Monument, Iowa	64 Stat. A 371
805.	El Morro National Monument, New Mexico	34 Stat. 3264
2112.	Fort Jefferson National Monument, Florida	49 Stat. 3340
1713.	Fort Pulaski National Monument, Georgia	43 Stat. 1968
4617.	Gates of the Arctic National Monument, Alaska	93 Stat. 1457
781.	Gila Cliff Dwellings National Monument, New Mexico	35 Stat. 2162
1733.	Glacier Bay National Monument, Alaska	43 Stat. 1988
2022.	Grand Canyon National Monument, Arizona	47 Stat. 2547
88?.	Gran Quivira National Monument, New Mexico	36 Stat. 2503
1994.	Great Sand Dunes National Monument, Colorado	47 Stat. 2506
1877.	Holy Cross National Monument, Colorado	46 Stat. 2993
1654.	Hovenweep National Monument, Colorado-Utah	42 Stat. 2299
2578.	Jackson Hole National Monument, Wyoming	87 Stat. 731
799.	Jewel Cave National Monument, South Dakota	35 Stat. 2180
1487.	Katmai National Monument, Alaska	40 Stat. 1855
4620.	Kenai Fjords National Monument, Alaska	93 Stat. 1462
4621.	Kobuk Valley National Monument, Alaska	93 Stat. 1463
4622.	Lake Clark National Monument, Alaska	93 Stat. 1465
1755.	Lava Beds National Monument, California	44 Stat. 2591
1618.	Lehman Caves National Monument, Nevada	43 Stat. 2280
3889.	Marble Canyon National Monument, Arizona	83 Stat. 924
4623.	Misty Fjords National Monument, Alaska	93 Stat. 1466
696.	Montezuma Castle National Monument, Arizona	34 Stat. 3265
1653.	Mound City Group National Monument, Ohio	42 Stat. 2298
793.	Muir Woods National Monument, California	35 Stat. 2174

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Proc No.	National Monument	Citation
804.	Natural Bridges National Monument, Utah	35 Stat. 2183
873.	Navajo National Monument, Arizona	36 Stat. 2491
4624.	Noatak National Monument, Alaska	93 Stat. 1468
1351.	Old Kasaan National Monument, Alaska	39 Stat. 1812
876.	Oregon Caves National Monument, Oregon	36 Stat. 2497
786.	Pinnacles National Monument, California	35 Stat. 2177
1663.	Pipe Spring National Monument, Arizona	43 Stat. 1913
1043.	Rainbow Bridge National Monument, Utah	38 Stat. 2703
3413.	Russell Cave National Monument, Alabama	75 Stat. 1058
2032.	Saguaro National Monument, Arizona	47 Stat. 2557
1514.	Scotts Bluff National Monument, Nebraska	41 Stat. 1779
880.	Shoshone Cavern National Monument, Wyoming	36 Stat. 2501
959.	Sitka National Monument, Alaska	36 Stat. 2601
1713.	Statue of Liberty National Monument	43 Stat. 1968
1911.	Sunset Crater National Monument, Arizona	46 Stat. 3023
1640.	Timpanogos Cave National Monument, Utah	42 Stat. 2285
787.	Tonto National Monument, Arizona	35 Stat. 2168
821.	Tumacacori National Monument, Arizona	35 Stat. 2205
2344.	Tuzigoot National Monument, Arizona	53 Stat. 2548
1318.	Walnut Canyon National Monument, Arizona	39 Stat. 1761
831.	Wheeler National Monument, Colorado	35 Stat. 2214
2025.	White Sands National Monument, New Mexico	47 Stat. 2551
4625.	Wrangell-St. Elias National Monument, Alaska	93 Stat. 1470
1721.	Wupatki National Monument, Arizona	43 Stat. 1977
1549.	Yucca House National Monument, Colorado	41 Stat. 1781
4626.	Yukon-Charley National Monument, Alaska	93 Stat. 1472
4627.	Yukon Flats National Monument, Alaska	93 Stat. 1473
2221.	Zion National Monument, Utah	50 Stat. 1089

ADMIRALTY ISLAND NATIONAL MONUMENT

Admiralty Island National Monument, Alaska, was established by Pub. L. 96-487, title V, § 503(b), Dec. 2, 1980, 94 Stat. 2399.

AGATE FOSSIL BEDS NATIONAL MONUMENT

The Agate Fossil Beds National Monument, Nebraska, was authorized by Pub. L. 89-33, June 5, 1965, 79 Stat. 123.

ALIBATES FLINT QUARRIES AND TEXAS PANHANDLE PUEBLO CULTURE NATIONAL MONUMENT

The Alibates Flint Quarries and Texas Panhandle Pueblo Culture National Monument, authorized to be established by Pub. L. 89-154, Aug. 31, 1965, 79 Stat. 587, was redesignated the Alibates Flint Quarries National Monument by Pub. L. 95-625, title III, § 321(c), Nov. 10, 1978, 92 Stat. 3488.

ANIAKCHAK NATIONAL MONUMENT

The Aniakchak National Monument, Alaska was established as a unit of the National Park System by Pub. L. 96-487, title II, § 201(1), Dec. 2, 1980, 94 Stat. 2377, classified to section 410hh(1) of this title.

ARCHES NATIONAL MONUMENT

The Arches National Monument established by Proc. No. 1875, 46 Stat. 2988, was abolished and funds of monument made available to Arches National Park by provisions of Pub. L. 92-155, § 1, Nov. 12, 1971, 85 Stat. 422, classified to section 272 of this title.

BIG HOLE BATTLEFIELD NATIONAL MONUMENT

The Big Hole Battlefield National Monument, Montana, established by Ex. Ord. No. 1216 on June 23, 1910, was redesignated as the Big Hole National Battlefield by Pub. L. 88-24, § 1, May 17, 1963, 77 Stat. 18.

CAPE KRUSENSTERN NATIONAL MONUMENT

The Cape Krusenstern National Monument, Alaska was established as a unit of the National Park System by Pub. L. 96-487, title II, § 210(3), Dec. 2, 1980, 94 Stat. 2378, classified to section 410hh(3) of this title.

CAPITOL REEF NATIONAL MONUMENT

The Capitol Reef National Monument established by Proc. No. 2246, 50 Stat. 1856, was abolished and funds of monument made available to Capitol Reef National Park by provisions of Pub. L. 92-207, § 1, Dec. 18, 1971, 85 Stat. 739, classified to section 273 of this title.

CHACO CANYON NATIONAL MONUMENT

The Chaco Canyon National Monument, New Mexico was abolished and incorporated in the Chaco Culture National Historical Park by Pub. L. 96-550, title II, § 502(a), Dec. 19, 1980, 94 Stat. 3227, classified to section 410ii-1(a) of this title.

CHANNEL ISLANDS NATIONAL MONUMENT

The Channel Islands National Monument was abolished and incorporated in Channels Islands National Park by Pub. L. 96-199, title II, § 201, Mar. 5, 1980, 94 Stat. 74, classified to section 410ff of this title.

CONGAREE SWAMP NATIONAL MONUMENT

Congaree Swamp National Monument, South Carolina, was authorized by Pub. L. 94-545, Oct. 18, 1976, 90 Stat. 2517.

DEVILS TOWER NATIONAL MONUMENT, WYOMING; ADDITIONAL LAND; EXCHANGE OF LANDS

Act Aug. 9, 1955, ch. 647, 69 Stat. 575, provided: "That, in recognition of the fiftieth anniversary of the Devils Tower National Monument, Wyoming, the first national monument, established on September 24, 1906, by the President of the United States pursuant to the Antiquities Act of 1906 (sections 431 to 433 of this title), and in order to provide suitable public campground facilities and other developments for the public benefit and to facilitate administration thereof, the Devils Tower National Monument hereafter shall include the following described land comprising approximately one hundred and fifty-five acres, which the Secretary of the Interior is authorized to procure in such manner as he shall find to be in the public interest:

"SIXTH PRINCIPAL MERIDIAN

"Township 53 north, range 65 west, section 18, south half northeast quarter, southeast quarter northwest quarter, north half southeast quarter, those parts lying north of and within a loop of the left bank of the Belle Fourche River; southwest quarter northwest quarter, that part lying west of the left bank of the Belle Fourche River;

"Township 53 north, range 66 west, section 13, south half northeast quarter.

"SEC. 2. For land exchange purposes, the Secretary of the Interior is authorized to accept title to any land or interests therein situated within the area added to the national monument by this Act, and, in exchange for land or interests therein so accepted, to convey any national monument land or interests therein of approximately, equal value situated in the northeast quarter of section 18, township 53 north, range 65 west, and lying east of the Belle Fourche River. National Monument lands so conveyed for exchange purposes shall be excluded from the national monument."

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EDISON LABORATORY NATIONAL MONUMENT

The Edison Laboratory National Monument established by Proc. No. 3148, 70 Stat. c49, and the Edison Home National Historic Site so designated Dec. 6, 1955, together with certain adjacent lands were redesignated the Edison National Historic Site by Pub. L. 87-628, § 1, Sept. 5, 1962, 76 Stat. 428.

FLORISSANT FOSSIL BEDS NATIONAL MONUMENT

The Florissant Fossil Beds National Monument, Colorado, was authorized to be established by Pub. L. 91-60, Aug. 20, 1969, 83 Stat. 101.

FORT LARAMIE NATIONAL MONUMENT

The Fort Laramie National Monument established by Proc. No. 2292, 53 Stat. 2461, was redesignated as the Fort Laramie National Historic Site by Pub. L. 86-444, § 3, Apr. 29, 1960, 74 Stat. 84.

FOSSIL BUTTE NATIONAL MONUMENT

The Fossil Butte National Monument, Wyoming, was authorized by Pub. L. 92-537, Oct. 23, 1972, 86 Stat. 1069.

GLACIER BAY NATIONAL MONUMENT

The Glacier Bay National Monument, Alaska, which was established by Proc. No. 1733, 43 Stat. 1988, had its boundaries enlarged by Proc. No. 4618, 93 Stat. 1458.

The Glacier Bay National Monument was redesignated the Glacier Bay National Park by Pub. L. 96-487, title II, § 202(1), Dec. 2, 1980, 94 Stat. 2382, classified to section 410hh-1(1) of this title.

GRAN QUIVIRA NATIONAL MONUMENT

The Gran Quivira National Monument, New Mexico was abolished and incorporated in Salinas National Monument by Pub. L. 96-550, title VI, § 601(b), Dec. 19, 1980, 94 Stat. 3231.

HOHOKAM PIMA NATIONAL MONUMENT

The Hohokam Pima National Monument, Arizona, was authorized by Pub. L. 92-525, Oct. 21, 1972, 86 Stat. 1047.

JOHN DAY FOSSIL BEDS NATIONAL MONUMENT

John Day Fossil Beds National Monument, Oregon, was authorized by Pub. L. 93-486, title I, § 101(a)(2), Oct. 26, 1974, 88 Stat. 1461.

KATMAI NATIONAL MONUMENT

The Katmai National Monument, Alaska, which was established by Proc. No. 1487, 40 Stat. 1855, had its boundaries enlarged by Proc. No. 4619, 93 Stat. 1460.

The Katmai National Monument was redesignated the Katmai National Park by Pub. L. 96-487, title II, § 202(2), Dec. 2, 1980, 94 Stat. 2382, classified to section 410hh-1(2) of this title.

MERIWETHER LEWIS NATIONAL MONUMENT

Inclusion of the Meriwether Lewis National Monument in the Natchez Trace Parkway, see section 460-1 of this title.

MISTY FJORDS NATIONAL MONUMENT

The Misty Fjords National Monument, Alaska, was established by Pub. L. 96-487, title V, § 503(a), Dec. 2, 1980, 94 Stat. 2399.

MOUNT ST. HELENS NATIONAL VOLCANIC MONUMENT

The Mount St. Helens National Volcanic Monument, Washington, was designated by Pub. L. 97-243, Aug. 26, 1982, 96 Stat. 301.

PECOS NATIONAL MONUMENT

The Pecos National Monument, New Mexico, was authorized by Pub. L. 89-54, June 28, 1965, 79 Stat. 195.

SALINAS NATIONAL MONUMENT

Salinas National Monument, New Mexico, was authorized by Pub. L. 96-550, title VI, § 601, Dec. 19, 1980, 94 Stat. 3231.

SITKA NATIONAL MONUMENT

The Sitka National Monument, Alaska, established by Proc. No. 959, 36 Stat. 2601, including additional lands commemorating czarist Russia's exploration and colonization of Alaska and the Russian mission, was redesignated the Sitka National Historical Park by Pub. L. 92-501, Oct. 18, 1972, 86 Stat. 904.

ZION NATIONAL MONUMENT

Consolidation of Zion National Park and Zion National Monument, see sections 346b to 346d of this title.

NATIONAL MEMORIALS

National Memorial	*Authorization*
Arkansas Post National Memorial, Arkansas.	Authorized by Pub. L. 86-595, July 6, 1960, 74 Stat. 333.
Benjamin Franklin National Memorial, Pa.	Designation of Benjamin Franklin Memorial Hall as National Memorial by Pub. L. 92-551, Oct. 25, 1972 86 Stat. 1164.
Chamizal National Memorial, Texas.	Authorized by Pub. L. 89-479, June 30, 1966, 80 Stat. 232.
Custis-Lee Mansion National Memorial, Virginia.	Authorized by act Mar. 4, 1925, ch. 562, 43 Stat. 1356. Made permanent memorial by act June 29, 1955, ch. 223, 69 Stat. 190.
David Berger Memorial, Ohio.	Authorized by Pub. L. 96-199, title I, § 116, Mar. 5, 1980, 94 Stat. 71.
Father Marquette National Memorial, Michigan.	Authorized by Pub. L. 94-160, Dec. 20, 1975, 89 Stat. 848.
Federal Hall National Memorial, New York.	Designated May 26, 1939. Designation changed from Federal Hall Memorial Historic Site by act Aug. 11, 1955, ch. 779, 69 Stat. 632.
Fort Caroline National Memorial, Florida.	Authorized by act Sept. 21, 1950, ch. 973, 64 Stat. 897. Established Jan. 16, 1953.
Franklin Delano Roosevelt National Memorial, District of Columbia.	Authorized by Pub. L. 97-224, July 28, 1982, 96 Stat. 243.
House Where Lincoln Died National Memorial, District of Columbia.	Authorized by act June 11, 1896, ch. 420, 29 Stat. 439.
Johnstown Flood National Memorial, Pennsylvania.	Authorized by Pub. L. 88-546, Aug. 31, 1964, 78 Stat. 752.
Lincoln Boyhood National Memorial, Indiana.	Authorized by Pub. L. 87-407, Feb. 19, 1962, 76 Stat. 9.
Lincoln Museum National Memorial, District of Columbia.	Authorized by act Apr. 7, 1866, ch. 28, § 1, 14 Stat. 23.
Lincoln National Memorial, District of Columbia.	Authorized by act Feb. 9, 1911, ch. 42, 36 Stat. 898.
Marine Corps of the United States Memorial.	Authorized by act July 1, 1947, ch. 196, 61 Stat. 242, as amended July 7, 1952, ch. 585, 66 Stat. 441, June 18, 1953, ch. 120, 67 Stat. 64.
Mount Rushmore National Memorial, South Dakota.	Authorized by act Feb. 25, 1929, ch. 315, 45 Stat. 1300.
Seabees of the United States Navy Memorial.	Authorized by Pub. L. 93-422, Sept. 18, 1972, 86 Stat. 678.
Signers of the Declaration of Independence Memorial, District of Columbia.	Authorized by Pub. L. 95-280, Apr. 17, 1978, 92 Stat. 197.
Thomas Jefferson National Memorial, District of Columbia.	Authorized by act June 26, 1934, ch. 763, 48 Stat. 1243.
United States Navy Memorial, District of Columbia.	Authorized by Pub. L. 96-199, title I, § 113, Mar. 5, 1980, 94 Stat. 70.
Vietnam Veterans Memorial, District of Columbia.	Authorized by Pub. L. 96-297, July 1, 1980, 94 Stat. 827.
Washington Monument National Memorial, District of Columbia.	Authorized by act Aug. 2, 1876, ch. 250, § 1, 19 Stat. 123.
Wright Brothers National Memorial, North Carolina.	Kill Devil Hill National Monument authorized by act Mar. 2, 1927, ch. 251, 44 Stat. 1264. Name changed to Wright Brothers National Memorial Dec. 1, 1953.

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ALBERT EINSTEIN MEMORIAL

Conveyance of property to National Academy of Sciences for erection and maintenance of a Memorial to Albert Einstein on south side of Square Numbered 88 between 21st Street, 22d Street, and Constitution Avenue, District of Columbia, with reverter of title when no longer used for memorial purposes or public access is restricted, was authorized by Pub. L. 95-625, title VI, § 612, Nov. 10, 1978, 92 Stat. 3521, as amended Pub. L. 96-87, title IV, § 401(o), Oct. 12, 1979, 93 Stat. 666.

STUDY TO ADD ALASKA AND HAWAII TO LINCOLN NATIONAL MEMORIAL

Pub. L. 94-556, Oct. 19, 1976, 90 Stat. 2632, provided: "That, for the purpose of providing appropriate commemoration at the Lincoln National Memorial of the addition of the States of Alaska and Hawaii to the Union, the Secretary of the Interior is authorized and directed to study the feasibility of and make recommendations for the recognition at an appropriate place at such memorial of the addition to the Union of the States of Alaska and Hawaii. Such recommendations shall after review and approval by the Commission of Fine Arts, the National Capital Planning Commission, and the Advisory Council on Historic Preservation be submitted to the Committees on Interior and Insular Affairs of the Senate and the House of Representatives of the United States. If, at the end of sixty days (not counting days on which the Senate or the House of Representatives has adjourned for more than three consecutive days) following receipt of such recommendations, neither committee has adopted a resolution of disapproval, the Secretary is authorized and directed to carry out said recommendations.

"SEC. 2. There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act, but not to exceed $20,000. No funds authorized to be appropriated pursuant to this Act shall be available prior to October 1, 1977."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 407, 432, 434, 470cc, 470dd, 1133 of this title; title 43 section 1714.

§ 431a. Limitation on further extension or establishment of national monuments in Wyoming

No further extension or establishment of national monuments in Wyoming may be undertaken except by express authorization of Congress.

(Sept. 14, 1950, ch. 950, § 1, 64 Stat. 849.)

CODIFICATION

Section comprises only part of the last sentence of section 1 of act Sept. 14, 1950. The remainder of such section, except that part of the last sentence which repealed sections 406 to 406d of this title, is set out as sections 406d-1 and 451a of this title.

REPEAL OF INCONSISTENT LAWS

Repeal of laws inconsistent with act Sept. 14, 1950, see note set out under section 406d-1 of this title.

CROSS REFERENCES

National parks in Wyoming, limitation on further extension or establishment, see section 451a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 406d-1, 406d-2, 406d-3, 406d-5 of this title.

§ 432. Permits to examine ruins, excavations, and gathering of objects; regulations

Permits for the examination of ruins, the excavation of archaeological sites, and the gathering of objects of antiquity upon the lands under their respective jurisdictions may be granted by the Secretaries of the Interior, Agriculture, and Army to institutions which they may deem properly qualified to conduct such examination, excavation, or gathering, subject to such rules and regulations as they may prescribe: *Provided*, That the examinations, excavations, and gatherings are undertaken for the benefit of reputable museums, universities, colleges, or other recognized scientific or educational institutions, with a view to increasing the knowledge of such objects, and that the gatherings shall be made for permanent preservation in public museums. The Secretaries of the departments aforesaid shall make and publish from time to time uniform rules and regulations for the purpose of carrying out the provisions of this section and sections 431 and 433 of this title.

(June 8, 1906, ch. 3060, §§ 3, 4, 34 Stat. 225.)

CODIFICATION

The last sentence only of this section was derived from section 4 of act June 8, 1906, the remainder being from section 3.

CHANGE OF NAME

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3011 to 3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

TRANSFER OF FUNCTIONS

Enforcement functions of Secretary or other official in Department of Interior related to compliance with permits issued under sections 431, 432 and 433 of this title and such functions of Secretary or other official in Department of Agriculture, insofar as they involve lands and programs under jurisdiction of that Department, related to compliance with removal of objects of antiquity under sections 431, 432, and 433 with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of date of initial operation of the Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§ 102(e), (f), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out in the Appendix to Title 5, Government Organization and Employees.

SECRETARY OF THE AIR FORCE

For transfer of certain functions relating to real property under the jurisdiction of the Department of the Air Force, to the Secretary of the Air Force from the Secretary of the Army, see Secretary of Defense Transfer Order No. 14 (§ 2(25)), eff. July 1, 1948.

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SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 434, 470cc, 470dd, 1133 of this title; title 20 section 78a; title 43 section 1714.

§ 433. American antiquities

Any person who shall appropriate, excavate, injure, or destroy any historic or prehistoric ruin or monument, or any object of antiquity, situated on lands owned or controlled by the Government of the United States, without the permission of the Secretary of the Department of the Government having jurisdiction over the lands on which said antiquities are situated, shall, upon conviction, be fined in a sum of not more than $500 or be imprisoned for a period of not more than ninety days, or shall suffer both fine and imprisonment, in the discretion of the court.

(June 8, 1906, ch. 3060, § 1, 34 Stat. 225.)

TRANSFER OF FUNCTIONS

Enforcement functions of Secretary or other official in Department of Interior related to compliance with permits issued under sections 431, 432, and 433 of this title and such functions of Secretary or other official in Department of Agriculture, insofar as they involve lands and programs under jurisdiction of that Department, related to compliance with removal of objects of antiquity under sections 431, 432, and 433 with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of date of initial operation of the Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§ 102(e), (f), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 432, 434, 470cc, 470dd, 1133 of this title; title 20 section 78a; title 43 section 1714.

§ 433a. Perry's Victory and International Peace Memorial; establishment

The President of the United States is authorized to establish by proclamation the following-described Government lands, together with the Perry's Victory Memorial proper, its approaches, retaining walls, and all buildings, structures, and other property thereon, situated in Put-in-Bay Township, South Bass Island, Ottawa County, Lake Erie, State of Ohio, as the "Perry's Victory and International Peace Memorial", for the preservation of the historical associations connected therewith, to inculcate the lessons of international peace by arbitration and disarmament, and for the benefit and enjoyment of the people: Commencing at the intersection of the middle line of Delaware Avenue and Chapman Avenue, in the village of Put-in-Bay, and running thence south eighty-eight degrees fifty-nine minutes east in the middle line of said Delaware Avenue, and the same extended four hundred and ninety-five feet to Lake Erie; thence north forty-nine degrees fifty-nine minutes east along said lake shore three hundred and forty-six feet; thence north forty-three degrees fourteen minutes east along said lake shore two hundred and twelve feet; thence north fifty-three degrees thirteen minutes east four hundred feet along said lake shore; thence north forty-six degrees six minutes west about seven hundred and thirty feet to Lake Erie; thence southwesterly and westerly along said lake shore to the middle line, extended, of said Chapman Avenue; thence south one degree thirty minutes west along said middle line, and the same extended, about five hundred and twenty feet to the place of beginning, and containing fourteen and twenty-five one-hundredths acres of land and known as a part of lots numbered 1 and 2, range south of county road, and a part of lot numbered 12, East Point, in South Bass Island, in the township of Put-in-Bay, county of Ottawa, State of Ohio.

(June 2, 1936, ch. 477, § 1, 49 Stat. 1393; Oct. 26, 1972, Pub. L. 92-568, § 1, 86 Stat. 1181.)

REFERENCES IN TEXT

The proclamation, authorized in text, was carried out by the President in Proc. No. 2182, July 6, 1936, 50 Stat. 1734.

CHANGE OF NAME

"Perry's Victory and International Peace Memorial" was substituted for "Perry's Victory and International Peace Memorial National Monument" to conform to the redesignation provided in section 1 of Pub. L. 92-568, classified to section 433f-1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 433c, 433f, 433f-1 of this title.

§ 433b. Administration, protection, and development

The administration, protection and development of the aforesaid peace memorial shall be exercised under the direction of the Secretary of the Interior by the National Park Service, subject to the provisions of sections 1 and 2 to 4 of this title, as amended.

(June 2, 1936, ch. 477, § 2, 49 Stat. 1394; Oct. 26, 1972, Pub. L. 92-568, § 1, 86 Stat. 1181.)

CHANGE OF NAME

"Peace memorial" was substituted for "national monument" to conform to the redesignation of Perry's Victory and International Peace Memorial National Monument as Perry's Victory and International Peace Memorial provided in section 1 of Pub. L. 92-568, classified to section 433f-1 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of the Interior, with certain exceptions, to the Secretary of Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 433f of this title.

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UNIFORM RULES AND REGULATIONS

PRESCRIBED BY THE SECRETARIES OF THE INTERIOR, AGRICULTURE, AND WAR TO CARRY OUT THE PROVISIONS OF THE "ACT FOR THE PRESERVATION OF AMERICAN ANTIQUITIES," APPROVED JUNE 8, 1906 (34 STAT. L., 225).

1. Jurisdiction over ruins, archeological sites, historic and prehistoric monuments and structures, objects of antiquity, historic landmarks, and other objects of historic or scientific interest, shall be exercised under the act by the respective Departments as follows:

By the Secretary of Agriculture over lands within the exterior limits of forest reserves, by the Secretary of War over lands within the exterior limits of military reservations, by the Secretary of the Interior over all other lands owned or controlled by the Government of the United States, provided the Secretaries of War and Agriculture may by agreement cooperate with the Secretary of the Interior in the supervision of such monuments and objects covered by the act of June 8, 1906, as may be located on lands near or adjacent to forest reserves and military reservations, respectively.

2. No permit for the removal of any ancient monument or structure which can be permanently preserved under the control of the United States *in situ*, and remain an object of interest, shall be granted.

3. Permits for the examination of ruins, the excavation of archeological sites, and the gathering of objects of antiquity will be granted, by the respective Secretaries having jurisdiction, to reputable museums, universities, colleges, or other recognized scientific or educational institutions, or to their duly authorized agents.

4. No exclusive permits shall be granted for a larger area than the applicant can reasonably be expected to explore fully and systematically with n the time limit named in the permit.

5. Each application for a permit should be filed with the Secretary having jurisdiction, and must be accompanied by a definite outline of the proposed work, indicating the name of the institution making the request, the date proposed for beginning the field work, the length of time proposed to be devoted to it, and the person who will have immediate charge of the work. The application must also contain an exact statement of the character of the work, whether examination, excavation, or gathering, and the public museum in which the collections made under the permit are to be permanently preserved. The application must be accompanied by a sketch plan or

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description of the particular site or area to be examined, excavated, or searched. so definite that it can be located on the map with reasonable a curacy.

6. No permit will be granted for a period of more than three years, but if the work has been diligently prosecuted under the permit, the time may be extended for proper cause upon application.

7. Failure to begin work under a permit within six months after it is granted, or failure to diligently prosecute such work after it has been begun, shall make the permit void without any order or proceeding by the Secretary having jurisdiction.

8. Applications for permits shall be referred to the Smithsonian Institution for recommendation.

9. Every permit shall be in writing and copies shall be transmitted to the Smithsonian Institution and the field officer in charge of the land involved. The permittee will be furnished with a copy of these rules and regulations.

10. At the close of each season's field work the permittee shall report in duplicate to the Smithsonian Institution, in such form as its secretary may prescribe, and shall prepare in duplicate a catalogue of the collections and of the photographs made during the season, indicating therein such material, if any, as may be available for exchange.

11. Institutions and persons receiving permits for excavation shall, after the completion of the work, restore the lands upon which they have worked to their customary condition, to the satisfaction of the field officer in charge.

12. All permits shall be terminable at the discretion of the Secretary having jurisdiction.

13. The field officer in charge of land owned or controlled by the Government of the United States shall. from time to time, inquire and report as to the existence, on or near such lands, of ruins and archeological sites, historic or prehistoric ruins or monuments. objects of antiquity, historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest.

14. The field officer in charge may at all times examine the permit of any person or institution claiming privileges granted in accordance with the act and these rules and regulations, and may fully examine all work done under such permit.

15. All persons duly authorized by the Secretaries of Agriculture. War, and Interior may apprehend or cause to be arrested. as provided in the act of February 6, 1905 (33 Stat. L., 700). any person or persons who appropriate, excavate, injure. or destroy any historic or prehistoric ruin or monument. or any object of antiquity on lands under the supervision of the Secretaries of Agriculture, War, and Interior, respectively.

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16. Any object of antiquity taken, or collection made, on lands owned or controlled by the United States, without a permit, as prescribed by the act and these rules and regulations, or there taken or made, contrary to the terms of the permit, or contrary to the act and these rules and regulations, may be seized wherever found and at any time, by the proper field officer or by any person duly authorized by the Secretary having jurisdiction, and disposed of as the Secretary shall determine, by deposit in the proper national depository or otherwise.

17. Every collection made under the authority of the act and of these rules and regulations shall be preserved in the public museum designated in the permit and shall be accessible to the public. No such collection shall be removed from such public museum without the written authority of the Secretary of the Smithsonian Institution, and then only to another public museum, where it shall be accessible to the public; and when any public museum, which is a depository of any collection made under the provisions of the act and these rules and regulations, shall cease to exist, every such collection in such public museum shall thereupon revert to the national collections and be placed in the proper national depository.

WASHINGTON, D. C., *December 28, 1906.*

The foregoing rules and regulations are hereby approved in triplicate and, under authority conferred by law on the Secretaries of the Interior, Agriculture, and War, are hereby made and established, to take effect immediately.

E. A. Hitchcock

Secretary of the Interior.

James Wilson

Secretary of Agriculture.

Wm. H. Taft.

Secretary of War.

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DEPARTMENT OF THE INTERIOR

Office of the Secretary

[43 CFR Part 3]

PRESERVATION OF AMERICAN ANTIQUITIES

Definition of "Object of Antiquity"

AGENCY: Heritage Conservation and Recreation Service.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document is in furtherance of the Department of the Interior's responsibilities in the administration of the American Antiquities Act of 1906, for the preservation and protection of archeological, historic and paleontological resources located on federally owned or controlled lands administered by this Department. Specifically, the Department proposes a definition of the phrase "object of antiquity" as used in the act for the purpose of providing notice to the public of those objects subject to the prohibitions of the Act.

SUPPLEMENTAL INFORMATION: The proposed definition of "object of antiquity" is designed to provide understanding as to the objects covered by the American Antiquities Act of 1906, (34 Stat. 225), which provides criminal penalties for the violation of its provisions. To this end, "object of antiquity" is defined by four subsections that attempt to describe, in lay terms, objects that are of archeological, anthropological, paleontological, or historic interest.

This definition is intended to eliminate the infirmities in the act found by the Ninth Circuit Court of Appeals in *United States* v. *Diaz*, 499 F. 2d 113 (9th Cir. 1974). In that case, the court held that because the act used undefined terms of uncommon usage, it was unconstitutionally vague. Of specific concern to the court was that the Government used not only age, but also the use to which an object was put in determining which objects were protected by the act. This proposed definition addresses both of those problems by providing notice, in lay terms, of what it is to be protected and by making age, and not use, the most significant factor.

Artifacts (or objects made or modified by man for his use) are protected by paragraph (a). The involvement of man in making or modifying the object with a view toward subsequent use is the attribute that makes the object valuable to the fields of archeology and anthropology. While the list in paragraph (a) of types of objects covered is intended to be exemplary, not inclusive, it should give the average person adequate notice of what is meant by the word "artifact."

Skeletal remains are covered by paragraph (b). Bones are generally not artifacts, but are of great importance to archeology and anthropology when they occur in a cultural context. This point is obvious for human skeletal remains. Faunal (animal) skeletal materials are also important because they often yield human behavorial data of great value to the study of man.

The third paragraph (c) gives land managers the option of protecting any object, natural or man-made, located in or associated with a site of archeological, prehistoric, or historic significance by taking an official action to notify the public that the site is protected. Such notification could occur either by the inclusion of the site on the National Register of Historic Places (constructive notice), or through fencing, discretionary posting, or some other onsite designation (actual notice).

The fourth paragraph (d) provides protection for vertebrate paleontological specimens under the authority of this act other than those specimens located in a cultural context referenced in paragraph (b). This subsection pertains specifically to fossil materials important to the study of vertebrate paleontology.

It should be noted that this definition will apply only to lands administered by the Department of the Interior. Those other Departments to which this act grants regulatory authority, Defense and Agriculture, are considering similar action.

It is hereby determined that the publication of this proposed regulation would not constitute a major Federal action significantly affecting the quality of the human environment and that no environmental impact statement pursuant to section 102(2)(c) of the National Environmental Policy Act, 42 U.S.C. 433(c) is required. For specific proposals requiring the Department of the Interior to carry out its cultural resource management responsibilities under the Antiquities Act, or other historic preservation legislation, compliance with the National Environmental Policy Act will be accomplished on an individual basis.

The following persons participated in the writing of this regulation: Charles M. McKinney, Manager, Federal Antiquities Program, Office of Archeology and Historic Preservation, Department of the Interior, Washington, D.C. and John G. DeKoster, Attorney, Office of the Solicitor, Department of the Interior, Washington, D.C.

NOTE—The Department of the Interior has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and Office of Management and Budget (OMB) Circular A 107.

43 CFR Part 3

Dated: March 31, 1978.

ROBERT L. HERBST,
Assistant Secretary for Fish and Wildlife and Parks.

Pursuant to the authority of the Secretary of the Interior contained in Section 4 of the American Antiquities Act of 1906, 34 Stat. 225 (16 U.S.C. 432), it is hereby proposed to add § 3.18 to Part 3 of Title 43 of the Code of Federal Regulations, to read as follows:

§ 3.18 Definition.

Object of antiquity as used in the American Antiquities Act of 1906, 34 Stat. 225 (16 U.S.C. 431, 432 and 433) and in this Part, means—

(a) Any artifact that is at least 100 years of age, including but not limited to petroglyphs, pictographs (prehistoric and historic rock art), intaglios, rock alignments, paintings, pottery (ceramics), tools, implements, ornaments, jewelry, coins, fabrics, clothing, containers, ceremonial objects (items of socio-religious or political significance), vessels, ships armaments, vehicles, structures (or remains thereof), and buildings;

(b) When found within a cultural context, any skeletal remains of humans or other vertebrate animals (including fossils), that are at least 100 years of age;

(c) Any object that is at least 100 years of age and is located in or associated with an archeological, historic, or paleontological site, if the site has been physically posted or marked by the land manager as protected, or has been listed in the National Register of Historic Places; or

(d) Any remains of extinct fossil vertebrate species.

NOTE—The Department is presently considering various alternatives for paleontological specimens as "objects of scientific interest" aside from "objects of antiquity" and for future consideration under the authority of the American Antiquities Act of 1906. Until further notice of either separate protective legislation or administrative actions under the existing statute, vertebrate specimens will continue to receive full protection under the act.

By Departmental administrative decision, invertebrate and paleobotanical specimens have not received protection under the permit authority of this statute in the past. However, should a land managing bureau through documented consultation with the paleontological professional community determine certain species to be rare and endangered, specific localities may be designated and subject to the permit provisions of the Act at the discretion of the Secretary. Such localities would receive protection referenced in subsection (c) above and be subject to conservation measures as directed by the Secretary of the Interior.

[FR Doc. 78-9477 Filed 4-7-78; 8:45 am]

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HISTORIC SITES ACT OF 1935
16 U.S.C. 461, P.L. 74-292, 49 STAT. 666

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SUBCHAPTER I—GENERAL PROVISIONS

§ 461. Declaration of national policy

It is declared that it is a national policy to preserve for public use historic sites, buildings, and objects of national significance for the inspiration and benefit of the people of the United States.

(Aug. 21, 1935, ch. 593, § 1, 49 Stat. 666.)

SHORT TITLE

Act Aug. 21, 1935, ch. 593, 49 Stat. 666, which is classified to sections 461 to 467 of this title, is popularly known as the "Historic Sites, Buildings, and Antiquities Act".

§ 462. Administration by Secretary of the Interior; powers and duties enumerated

The Secretary of the Interior (hereinafter in sections 461 to 467 of this title referred to as the Secretary), through the National Park Service, for the purpose of effectuating the policy expressed in section 461 of this title, shall have the following powers and perform the following duties and functions:

(a) Secure, collate, and preserve drawings, plans, photographs, and other data of historic and archaeologic sites, buildings, and objects.

(b) Make a survey of historic and archaeologic sites, buildings, and objects for the purpose of determining which possess exceptional value

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as commemorating or illustrating the history of the United States.

(c) Make necessary investigations and researches in the United States relating to particular sites, buildings, or objects to obtain true and accurate historical and archaeological facts and information concerning the same.

(d) For the purpose of sections 461 to 467 of this title, acquire in the name of the United States by gift, purchase, or otherwise any property, personal or real, or any interest or estate therein, title to any real property to be satisfactory to the Secretary: *Provided*, That no such property which is owned by any religious or educational institution, or which is owned or administered for the benefit of the public shall be so acquired without the consent of the owner: *Provided further*, That no such property shall be acquired or contract or agreement for the acquisition thereof made which will obligate the general fund of the Treasury for the payment of such property, unless or until Congress has appropriated money which is available for that purpose.

(e) Contract and make cooperative agreements with States, municipal subdivisions, corporations, associations, or individuals, with proper bond where deemed advisable, to protect, preserve, maintain, or operate any historic or archaeologic building, site, object, or property used in connection therewith for public use, regardless as to whether the title thereto is in the United States: *Provided*, That no contract or cooperative agreement shall be made or entered into which will obligate the general fund of the Treasury unless or until Congress has appropriated money for such purpose.

(f) Restore, reconstruct, rehabilitate, preserve, and maintain historic or prehistoric sites, buildings, objects, and properties of national historical or archaeological significance and where deemed desirable establish and maintain museums in connection therewith.

(g) Erect and maintain tablets to mark or commemorate historic or prehistoric places and events of national historical or archaeological significance.

(h) Operate and manage historic and archaeologic sites, buildings, and properties acquired under the provisions of sections 461 to 467 of this title together with lands and subordinate buildings for the benefit of the public, such authority to include the power to charge reasonable visitation fees and grant concessions, leases, or permits for the use of land, building space, roads, or trails when necessary or desirable either to accommodate the public or to facilitate administration: *Provided*, That the Secretary may grant such concessions, leases, or permits and enter into contracts relating to the same with responsible persons, firms, or corporations without advertising and without securing competitive bids.

(i) When the Secretary determines that it would be administratively burdensome to restore, reconstruct, operate, or maintain any particular historic or archaeologic site, building, or property donated to the United States through the National Park Service, he may cause the same to be done by organizing a corporation for that purpose under the laws of the District of Columbia or any State.

(j) Develop an educational program and service for the purpose of making available to the public facts and information pertaining to American historic and archaeologic sites, buildings, and properties of national significance. Reasonable charges may be made for the dissemination of any such facts or information.

(k) Perform any and all acts, and make such rules and regulations not inconsistent with sections 461 to 467 of this title as may be necessary and proper to carry out the provisions thereof. Any person violating any of the rules and regulations authorized by said sections shall be punished by a fine of not more than $500 and be adjudged to pay all cost of the proceedings.

(Aug. 21, 1935, ch. 593, § 2, 49 Stat. 666; Oct. 9, 1965, Pub. L. 89-249, § 8, 79 Stat. 971.)

AMENDMENTS

1965—Subsec. (h). Pub. L. 89-249 changed the proviso to allow granting concessions, leases, and permits and entering into contracts with responsible persons, firms, or corporations without advertising and without securing competitive bids.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of the Interior, with certain exceptions, to the Secretary of Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

FINANCIAL ASSISTANCE FOR MAINTENANCE AND PROTECTION OF FOLGER LIBRARY AND CORCORAN GALLERY OF ART; LIMITATION ON CONTRACT AUTHORITY

Pub. L. 96-344, § 1, Sept. 8, 1980, 94 Stat. 1133, provided: "That (a) in furtherance of the purposes of subsection 2(e) of the Act of August 21, 1935 (49 Stat. 666) [subsec. (e) of this section], the Secretary of the Interior may provide financial assistance for the maintenance and protection of the Folger Library and the Corcoran Gallery of Art.

"(b) Authority to enter into contracts or cooperative agreements, to incur obligations, or to make payments under this Act [Pub. L. 96-344, Sept. 8, 1980, 94 Stat. 1133] shall be effective only to the extent, and in such amounts, as are provided in advance in appropriation Acts."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 230e, 281e, 282a, 282b, 396d, 397d, 407q, 410u, 410w, 410z-4, 410aa-2, 410bb-1, 410cc-22, 410cc-32, 410ee, 410ii-5, 410jj-4, 410kk-1, 410*ll*, 430m, 450e-1, 450hh-2, 450pp-1, 459h-4, 463, 464, 465, 466, 467, 467b, 468, 469, 470a, 1133, 1244 of this title; title 40 sections 304a-2, 871.

§ 463. National Park System Advisory Board

(a) Establishment; composition; duties

A general advisory board to be known as the National Park System Advisory Board is hereby established, to be composed of not to exceed twelve persons, citizens of the United States, to include but not be limited to representatives competent in the fields of history, archaeology, architecture, and natural science, who shall be appointed by the Secretary for a term not to exceed four years. The Secretary shall take into consideration nominations for appointees from public and private, professional, civic, and

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educational societies, associations, and institutions. The members of such board shall receive no salary but may be paid expenses incidental to travel when engaged in discharging their duties as members. It shall be the duty of such board to advise the Secretary on matters relating to the National Park System, to other related areas, and to the administration of sections 461 to 467 of this title, including but not limited to matters submitted to it for consideration by the Secretary, but it shall not be required to recommend as to the suitability or desirability of surplus real and related personal property for use as an historic monument.

(b) Termination

The National Park System Advisory Board shall continue to exist until January 1, 1990. In all other respects, it shall be subject to the provisions of the Federal Advisory Committee Act.

(Aug. 21, 1935, ch. 593, § 3, 49 Stat. 667; Aug. 18, 1970, Pub. L. 91-383, § 9, as added Oct. 7, 1976, Pub. L. 94-458, § 2, 90 Stat. 1940, and amended Nov. 10, 1978, Pub. L. 95-625, title VI, § 604(2), 92 Stat. 3518.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (b), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-625 increased Board membership to twelve from eleven.

1976—Pub. L. 91-383, § 9, as added by Pub. L. 94-458, renamed the Advisory Board on National Parks, Historic Sites, Buildings and Monuments as the National Park System Advisory Board, substituted natural science for human geography as a field from which member selection may be made, limited appointment term to four years rather than at pleasure of Secretary, eliminated duty of Board to make recommendations concerning use of surplus property as an historic monument, provided for continuation of Board until Jan. 1, 1990, and made it subject to the provisions of the Federal Advisory Committee Act.

NEW YORK CITY NATIONAL SHRINES ADVISORY BOARD

Act Aug. 11, 1955, ch. 779, §§ 1, 2, 69 Stat. 632, as amended by Aug. 14, 1958, Pub. L. 85-658, 72 Stat. 613, provided for the appointment of an advisory board, to be known as the New York City National Shrines Advisory Board, to render advice to the Secretary of the Interior and to further public participation in the rehabilitation, development and the preservation of those historic properties in the New York City area that are of great national significance, identified as the Federal Hall National Memorial, Castle Clinton National Monument, and the Statue of Liberty National Monument, to conduct a study of these historic properties, and to submit recommendations concerning their preservation and administration to the Secretary of the Interior, such report and recommendations of the Board to be transmitted to the Congress by the Secretary of the Interior, together with his recommendations thereon, within one year following the date of the establishment of the Board, and with the Board to cease to exist when the Secretary of the Interior found that its purposes had been accomplished. The Secretary of the Interior was authorized to accept donations of funds for rehabilitation, development and preservation of the historic properties including any made upon condition that such funds are to be expended only if Federal funds in an amount equal to the donated funds are appropriated for such purposes.

FEDERAL HALL NATIONAL MEMORIAL

Act Aug. 11, 1955, ch. 779, § 3, 69 Stat. 633, provided that the Federal Hall Memorial National Historic Site, established pursuant to the Historic Sites Act of August 21, 1935 (49 Stat. 666) (sections 461 to 467 of this title), should thereafter be known as the "Federal Hall National Memorial".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 230e, 281e, 282a, 282b, 396d, 397d, 407q, 410u, 410w, 410z-4, 410aa-2, 410bb-1, 410ee, 410ii-5, 410jj-4, 410kk-1, 410*ll*, 430m, 450e-1, 450hh-2, 450pp-1, 459h-4, 462, 464, 465, 466, 467, 467b, 468, 469, 470a, 1133, 1244 of this title; title 40 sections 304a-2, 484, 871.

§ 464. Cooperation with governmental and private agencies

(a) [1] Authorization

The Secretary, in administering sections 461 to 467 of this title, is authorized to cooperate with and may seek and accept the assistance of any Federal, State, or municipal department or agency, or any educational or scientific institution, or any patriotic association, or any individual.

(b) Advisory committees

When deemed necessary, technical advisory committees may be established to act in an advisory capacity in connection with the restoration or reconstruction of any historic or prehistoric building or structure.

(c) Employment of assistance

Such professional and technical assistance may be employed, and such service may be established as may be required to accomplish the purposes of sections 461 to 467 of this title and for which money may be appropriated by Congress or made available by gifts for such purpose.

(Aug. 21, 1935, ch. 593, § 4, 49 Stat. 668.)

CODIFICATION

In subsec. (c), provisions that authorized employment of professional and technical assistance "without regard to the civil-service laws" were omitted as such employment is subject to the civil service laws unless specifically excepted by such laws or by laws enacted subsequent to Executive Order 8743, Apr. 23, 1941, issued by the President pursuant to the Act of Nov. 26, 1940, ch. 919, title I, § 1, 54 Stat. 1211, which covered most excepted positions into the classified (competitive) civil service. The Order is set out as a note under section 3301 of Title 5, Government Organization and Employees.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the two-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law, see section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

[1] Subsection designation "(a)" supplied.

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SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 230e, 281e, 282a, 282b, 396d, 397d, 407q, 410u, 410w, 410z-4, 410aa-2, 410bb-1, 410ee, 410ii-5, 410jj-4, 410kk-1, 410*ll*, 430m, 450e-1, 450hh-2, 450pp-1, 459h-4, 462, 463, 465, 466, 467, 467b, 468, 469, 470a, 1133, 1244 of this title; title 40 sections 304a-2, 871.

§ 465. Jurisdiction of States in acquired lands

Nothing in sections 461 to 467 of this title shall be held to deprive any State, or political subdivision thereof, of its civil and criminal jurisdiction in and over lands acquired by the United States under said sections.

(Aug. 21, 1935, ch. 593, § 5, 49 Stat. 668.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 230e, 281e, 282a, 282b, 396d, 397d, 407q, 410u, 410w, 410z-4, 410aa-2, 410bb-1, 410ee, 410ii-5, 410jj-4, 410kk-1, 410*ll*, 430m, 450e-1, 450hh-2, 450pp-1, 459h-4, 462, 463, 464, 466, 467, 467b, 468, 469, 470a, 1133, 1244 of this title; title 40 sections 304a-2, 871.

§ 466. Authorization of appropriations

There is authorized to be appropriated for carrying out the purposes of sections 461 to 467 of this title such sums as the Congress may from time to time determine.

(Aug. 21, 1935, ch. 593, § 6, 49 Stat. 668.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 230e, 281e, 282a, 282b, 396d, 397d, 407q, 410u, 410w, 410z-4, 410aa-2, 410bb-1, 410ee, 410ii-5, 410jj-4, 410kk-1, 410*ll*, 430m, 450e-1, 450hh-2, 450pp-1, 459h-4, 462, 463, 464, 465, 467, 467b, 468, 469, 470a, 1133, 1244 of this title; title 40 sections 304a-2, 871.

§ 467. Conflict of laws

The provisions of sections 461 to 467 of this title shall control if any of them are in conflict with any other Act or Acts relating to the same subject matter.

(Aug. 21, 1935, ch. 593, § 7, 49 Stat. 668.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 230e, 281e, 282a, 282b, 396d, 397d, 407q, 410u, 410w, 410z-4, 410aa-2, 410bb-1, 410ee, 410ii-5, 410jj-4, 410kk-1, 410*ll*, 430m, 450e-1, 450hh-2, 450pp-1, 459h-4, 462, 463, 464, 465, 466, 467b, 468, 469, 470a, 1133, 1244 of this title; title 40 sections 304a-2, 871.

§ 467a. Repealed. Pub. L. 96–586, § 4(a)(1), (b), Dec. 23, 1980, 94 Stat. 3386

Section, Pub. L. 92-727, § 1, Oct. 21, 1972, 86 Stat. 1049, authorized the Secretary of the Interior to accept, maintain, develop, and administer the Mar-A-Lago National Historic Site described in the order of designation dated Jan. 16, 1969, as part of the national park system and directed the Secretary to enter into agreements and take such action as deemed necessary to provide for administration and use of the Mar-A-Lago National Historic Site as a temporary residence for visiting foreign dignitaries or heads of state or members of the executive branch of the United States Government, with any further use determined by the Secretary after conferring with the Mar-A-Lago National Historic Site Advisory Commission.

EFFECTIVE DATE OF REPEAL

For effective date of repeal of this section, see Pub. L. 96-586, § 4, Dec. 23, 1980, 94 Stat. 3386, set out as a note below.

REPEALS, REDESIGNATIONS, CONVEYANCES, ETC., INVOLVING MAR-A-LAGO NATIONAL HISTORIC SITE

Pub. L. 96-586, § 4, Dec. 23, 1980, 94 Stat. 3386, provided that:

"(a)(1) Effective upon the conveyance or transfer authorized in subsection b. the Act of October 21, 1972, entitled 'An Act to provide for the administration of the Mar-A-Lago National Historic Site, in Palm Beach, Florida' [sections 467a and 467a-1 of this title] is repealed.

"(2) The order of designation of the Mar-A-Lago National Historic Site, dated January 16, 1969, is repealed and the site described therein is hereby designated as the Mar-A-Lago National Historic Landmark.

"(b) The Secretary of the Interior shall, within one hundred and twenty days of the date of enactment of this Act [Dec. 23, 1980], take such measures, consistent with the terms and conditions of the deed of conveyance from Marjorie M. Post to the United States of America, dated December 18, 1972, as may be necessary to transfer the property described in the order of designation of the Mar-A-Lago National Historic Site to the Majorie Merriweather Post Foundation of the District of Columbia (a charitable foundation organized under the District of Columbia Nonprofit Corporation Act).

"(c) The Secretary is authorized upon conveyance, to make appropriate adjustments in the funds available for the administration and management of the property, including but not limited to, return of unobligated donated funds to the trustees of the Marjorie Merriweather Post Foundation of the District of Columbia, and reprogram existing appropriations to related functions and activities of the National Park Service."

§ 467a-1. Repealed. Pub. L. 96–586, § 4(a)(1), (b), Dec. 23, 1980, 94 Stat. 3386

Section, Pub. L. 92-527, § 2, Oct. 21, 1972, 86 Stat. 1049, established the Mar-A-Lago National Historic Site Advisory Commission and provided for its membership, term of office, designation of a Chairman, filling of vacancies, compensation and expenses, consultations on general policies and specific matters related to administration of the site, and voting.

EFFECTIVE DATE OF REPEAL

For effective date of repeal of this section, see Pub. L. 96-586, § 4, Dec. 23, 1980, 94 Stat. 3386, set out as a note under section 467a of this title.

§ 467b. Survey by Secretary of the Interior of sites for commemoration of former Presidents of the United States

(a) Authority to conduct survey

The Secretary of the Interior (hereinafter referred to as the "Secretary") is authorized to conduct a survey of sites which he deems exhibit qualities most appropriate for the commemoration of each former President of the United States. The survey may include sites associated with the deeds, leadership, or lifework of a former President, and it may identify sites or structures historically unrelated to a former President but which may be suitable as a memorial to honor such President.

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(b) Preparation and transmittal to Congressional committees of reports on individual sites and structures

The Secretary shall, from time to time, prepare and transmit to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the United States Senate reports on individual sites and structures identified in the survey referred to in subsection (a) of this section, together with his recommendation as to whether such site or structure is suitable for establishment as a national historic site or national memorial to commemorate a former President. Each such report shall include pertinent information with respect to the need for acquisition of lands and interests therein, the development of facilities, and the operation and maintenance of the site or structure and the estimated cost thereof. If during the six-month period following the transmittal of a report pursuant to this subsection neither Committee has by vote of a majority of its members disapproved a recommendation of the Secretary that a site or structure is suitable for establishment as a national historic site, the Secretary may thereafter by appropriate order establish the same as a national historic site, including the lands and interests therein identified in the report accompanying his recommendation. The Secretary may acquire the lands and interests therein by donation, purchase with donated or appropriated funds, transfer from any other Federal agency, or exchange, and he shall administer the site in accordance with sections 1 and 2 to 4 of this title, as amended and supplemented, and sections 461 to 467 of this title, as amended.

(c) Prohibited statutory constructions

Nothing in this section shall be construed as diminishing the authority of the Secretary under sections 461 to 467 of this title or as authorizing the Secretary to establish any national memorial, creation of which is hereby expressly reserved to the Congress.

(d) Authorization of appropriations

There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

(Pub. L. 96-199, title I, § 120, Mar. 5, 1980, 94 Stat. 73.)

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RESERVOIR SALVAGE ACT OF 1960
16 U.S.C. 469, P.L. 86-523, 74 STAT. 220

AND THE

ARCHAEOLOGICAL AND HISTORIC PRESERVATION ACT OF 1974
16 U.S.C. 469a-1, P.L. 93-291, 88 STAT. 174

§ 469. Preservation of historical and archeological data threatened by dam construction or alterations of terrain

It is the purpose of sections 469 to 469c-1 of this title to further the policy set forth in sections 461 to 467 of this title, by specifically providing for the preservation of historical and archeological data (including relics and specimens) which might otherwise be irreparably lost or destroyed as the result of (1) flooding, the building of access roads, the erection of workmen's communities, the relocation of railroads and highways, and other alterations of the terrain caused by the construction of a dam by any agency of the United States, or by any private person or corporation holding a license issued by any such agency or (2) any alteration of the terrain caused as a result of any Federal construction project or federally licensed activity or program.

(Pub. L. 86-523, § 1, June 27, 1960, 74 Stat. 220; Pub. L. 93-291, § 1(1), May 24, 1974, 88 Stat. 174.)

AMENDMENTS

1974—Pub. L. 93-291 designated existing provisions as cl. (1) and added cl. (2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 469a-3, 469b, 469c, 469c-1, 470a, 470dd, 470hh of this title; title 42 section 5320.

§ 469a. Notice of dam construction to be given Secretary of the Interior by United States agencies

Before any agency of the United States shall undertake the construction of a dam, or issue a license to any private individual or corporation for the construction of a dam, it shall give written notice to the Secretary of the Interior (hereafter referred to as the Secretary) setting forth the site of the proposed dam and the approximate area to be flooded and otherwise changed if such construction is undertaken: *Provided*, That with respect to any flood water retarding dam which provides less than five thousand acre-feet of detention capacity and with respect to any other type of dam which creates a reservoir of less than forty surface acres the provisions of this section shall apply only when the constructing agency, in its preliminary surveys, finds, or is presented with evidence that historical or archeological materials exist or may be present in the proposed reservoir area.

(Pub. L. 86-523, § 2, formerly § 2(a), June 27, 1960, 74 Stat. 220, renumbered and amended Pub. L. 93-291, § 1(2), (5), May 24, 1974, 88 Stat. 174, 175.)

AMENDMENTS

1974—Pub. L. 93-291 struck out designation "(a)" preceding existing subsec. (a) and, in the resulting unlettered provisions, inserted "(hereafter referred to as the Secretary)" after "Secretary of the Interior". Former subsecs. (b) to (e) were disposed of as follows: former subsec. (b) was transferred and amended, and as so transferred and amended, is set out as sections 469a-1 and 469a-2 of this title, former subsecs. (c) and (e) were redesignated as subsecs. (a) and (b), respectively, of section 469a-3 of this title, and former subsec. (d) was deleted.

TRANSFER OF FUNCTIONS

Enforcement functions of Secretary or other official in Department of Interior related to compliance with system activities requiring coordination and approval under sections 469 to 469c of this title and such functions of Secretary or other official in Department of Agriculture, insofar as they involve lands and programs under jurisdiction of that Department, related to compliance with sections 469 to 469c of this title with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of date of initial operation of the Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§ 102(e), (f), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 469, 469-3, 469b, 469c, 469c-1, 470a, 470dd, 470hh of this title; title 42 section 5320.

§ 469a-1. Threat of irreparable loss or destruction of significant scientific, prehistorical, historical, or archeological data by Federal construction projects; notice to Secretary of the Interior; survey; recovery, preservation, and protection of data

(a) Notification and request for preservation of data

Whenever any Federal agency finds, or is notified, in writing, by an appropriate historical or archeological authority, that its activities in connection with any Federal construction project or federally licensed project, activity, or program may cause irreparable loss or destruction of significant scientific, prehistorical, historical, or archeological data, such agency shall notify the Secretary, in writing, and shall provide the Secretary with appropriate information concerning the project, program, or activity. Such agency may request the Secretary to undertake the recovery, protection, and preservation of such data (including preliminary survey, or other investigation as needed, and analysis and publication of the reports resulting from such investigation), or it may, with funds appropriated for such project, program, or activity, undertake such activities. Copies of reports of any investigations made pursuant to this section shall be submitted to the Secretary, who shall make them available to the public for inspection and review.

(b) Survey of site; preservation of data; compensation

Whenever any Federal agency provides financial assistance by loan, grant, or otherwise to any private person, association, or public entity, the Secretary, if he determines that significant scientific, prehistorical, historical, or archeological data might be irrevocably lost or destroyed, may with funds appropriated expressly for this purpose conduct, with the consent of all persons, associations, or public entities having a legal interest in the property involved, a survey of the affected site and undertake the recovery, protection, and preservation of such data (including analysis and publication). The Secretary shall, unless otherwise mutually agreed to in writing, compensate any person, as-

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sociation, or public entity damaged as a result of delays in construction or as a result of the temporary loss of the use of private or any nonfederally owned lands.

(Pub. L. 86-523, § 3, as added Pub. L. 93-291, § 1(3), May 24, 1974, 88 Stat. 174.)

PRIOR PROVISIONS

A prior section 3 of Pub. L. 86-523 which was redesignated section 6 of Pub. L. 86-523 and amended by Pub. L. 93-291, is classified to section 469b of this title.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Secretary or other official in Department of Interior and Secretary or other official in Department of Agriculture to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, see Transfer of Functions note set out under section 469a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 469, 469a-3, 469b, 469c, 469c-1, 470a, 470dd, 470hh of this title; title 42 section 5320.

§ 469a-2. Survey by Secretary of the Interior; recovery and preservation of data; compensation for delays in construction and for temporary loss of use of land

(a) Survey conducted; preservation of data

The Secretary, upon notification, in writing, by any Federal or State agency or appropriate historical or archeological authority that scientific, prehistorical, historical, or archeological data is being or may be irrevocably lost or destroyed by any Federal or federally assisted or licensed project, activity, or program, shall, if he determines that such data is significant and is being or may be irrevocably lost or destroyed and after reasonable notice to the agency responsible for funding or licensing such project, activity, or program, conduct or cause to be conducted a survey and other investigation of the areas which are or may be affected and recover and preserve such data (including analysis and publication) which, in his opinion, are not being, but should be, recovered and preserved in the public interest.

(b) Emergency projects

No survey or recovery work shall be required pursuant to this section which, in the determination of the head of the responsible agency, would impede Federal or federally assisted or licensed projects or activities undertaken in connection with any emergency, including projects or activities undertaken in anticipation of, or as a result of, a natural disaster.

(c) Initiation of survey

The Secretary shall initiate the survey or recovery effort within sixty days after notification to him pursuant to subsection (a) of this section or within such time as may be agreed upon with the head of the agency responsible for funding or licensing the project, activity, or program in all other cases.

(d) Compensation by Secretary

The Secretary shall, unless otherwise mutually agreed to in writing, compensate any person, association, or public entity damaged as a result of delays in construction or as a result of the temporary loss of the use of private or nonfederally owned land.

(Pub. L. 86-523, § 4, as added Pub. L. 93-291, § 1(3), May 24, 1974, 88 Stat. 174.)

PRIOR PROVISIONS

A prior section 4 of Pub. L. 86-523 which was redesignated section 7 of Pub. L. 86-523 and amended by Pub. L. 93-291, is classified to section 469c of this title.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Secretary or other official in Department of Interior and Secretary or other official in Department of Agriculture to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, see Transfer of Functions note set out under section 469a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 469, 469a-3, 469b, 469c, 469c-1, 470a, 470dd, 470hh of this title; title 42 section 5320.

§ 469a-3. Progress reports by Secretary of the Interior on surveys and work undertaken as result of surveys; disposition of relics and specimens recovered; coordination of survey and recovery activities; annual report

(a) Progress reports to funding or licensing agency

The Secretary shall keep the agency responsible for funding or licensing the project notified at all times of the progress of any survey made under sections 469 to 469c of this title or of any work undertaken as a result of such survey, in order that there will be as little disruption or delay as possible in the carrying out of the functions of such agency and the survey and recovery programs shall terminate at a time mutually agreed upon by the Secretary and the head of such agency unless extended by mutual agreement.

(b) Disposition of relics and specimens

The Secretary shall consult with any interested Federal and State agencies, educational and scientific organizations, and private institutions and qualified individuals, with a view to determining the ownership of and the most appropriate repository for any relics and specimens recovered as a result of any work performed as provided for in this section.

(c) Coordination of activities; annual report

The Secretary shall coordinate all Federal survey and recovery activities authorized under sections 469 to 469c-1 of this title and shall submit an annual report at the end of each fiscal year to the Committee on Interior and Insular Affairs of the House of Representatives and Committee on Energy and Natural Resources of the Senate indicating the scope and effectiveness of the program, the specific projects surveyed and the results produced, and the costs incurred by the Federal Government as a result thereof.

(Pub. L. 86-523, § 5, formerly § 2(c), (e), June 27, 1960, 74 Stat. 220, renumbered and amended Pub. L. 93-291, § 1(4), (6), (7), May 24, 1974, 88

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Stat. 175; Pub. L. 96-205, title VI, § 608(b)(1), Mar. 12, 1980, 94 Stat. 92.)

AMENDMENTS

1980—Subsec. (c). Pub. L. 96-205 substituted references to the House Committee on Interior and Insular Affairs and Senate Committee on Energy and Natural Resources, for reference to Interior and Insular Affairs Committees of the Congress.

1974—Subsec. (a). Pub. L. 93-291, § 1(4), (6), redesignated former subsec. (c) of section 469a of this title as subsec. (a) of this section and, in subsec. (a) as so redesignated, substituted "agency responsible for funding or licensing the project" for "instigating agency" and "agency and the survey and recovery programs shall terminate at a time mutually agreed upon by the Secretary and the head of such agency unless extended by mutual agreement" for "agency".

Subsec. (b). Pub. L. 93-291, § 1(6), redesignated former subsec. (e) of section 469a of this title as subsec. (b) of this section.

Subsec. (c). Pub. L. 93-291, § 1(7), added subsec. (c).

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Secretary or other official in Department of Interior and Secretary or other official in Department of Agriculture to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, see Transfer of Functions note set out under section 469a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 469, 469b, 469c, 469c-1, 470a, 470dd, 470hh, 470*ll* of this title; title 42 section 5320.

§ 469b. Administration; contracts or agreements; services of experts, consultants, or organizations; acceptance of funds

In the administration of sections 469 to 469c-1 of this title, the Secretary may—

(1) enter into contracts or make cooperative agreements with any Federal or State agency, any educational or scientific organization, or any institution, corporation, association, or qualified individual; and

(2) obtain the services of experts and consultants or organizations thereof in accordance with section 3109 of title 5; and

(3) accept and utilize funds made available for salvage archeological purposes by any private person or corporation or transferred to him by any Federal agency.

(Pub. L. 86-523, § 6, formerly § 3, June 27, 1960, 74 Stat. 221, renumbered and amended Pub. L. 93-291, § 1(8), May 24, 1974, 88 Stat. 175.)

AMENDMENTS

1974—Par. (2). Pub. L. 93-291 substituted "obtain the services of experts and consultants or organizations thereof in accordance with section 3109 of title 5" for "procure the temporary or intermittent services of experts or consultants or organizations thereof as provided in section 55a of title 5".

Par. (3). Pub. L. 93-291 substituted "or corporation to transferred to him by any Federal agency" for "or corporations holding a license issued by an agency of the United States for the construction of a dam or other type of water or power control project".

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Secretary or other official in Department of Interior and Secretary or other official in Department of Agriculture to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, see Transfer of Functions note set out under section 469a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 469, 469a-3, 469c, 469c-1, 470a, 470dd, 470hh of this title; title 42 section 5320.

§ 469c. Assistance to Secretary of the Interior by Federal agencies responsible for construction projects; authorization of appropriations

(a) Assistance of Federal agencies

To carry out the purposes of sections 469 to 469c-1 of this title, any Federal agency responsible for a construction project may assist the Secretary and/or it may transfer to him such funds as may be agreed upon, but not more than 1 per centum of the total amount authorized to be appropriated for such project, except that the 1 per centum limitation of this section shall not apply in the event that the project involves $50,000 or less: *Provided*, That the costs of such survey, recovery, analysis, and publication shall be considered nonreimbursable project costs.

(b) Authorization of appropriations for preservation of data

For the purposes of section 469a-1(b) of this title, there are authorized to be appropriated such sums as may be necessary, but not more than $500,000 in fiscal year 1974; $1,000,000 in fiscal year 1975; $1,500,000 in fiscal year 1976; $1,500,000 in fiscal year 1977; $1,500,000 in fiscal year 1978; $500,000 in fiscal year 1979; $1,000,000 in fiscal year 1980; $1,500,000 in fiscal year 1981; $1,500,000 in fiscal year 1982; and $1,500,000 in fiscal year 1983.

(c) Authorization of appropriations for surveys and investigations

For the purposes of section 469a-2(a) of this title, there are authorized to be appropriated not more than $2,000,000 in fiscal year 1974; $2,000,000 in fiscal year 1975; $3,000,000 in fiscal year 1976; $3,000,000 in fiscal year 1977; $3,000,000 in fiscal year 1978; $3,000,000 in fiscal year 1979; $3,000,000 in fiscal year 1980; $3,500,000 in fiscal year 1981; $3,500,000 in fiscal year 1982; and $4,000,000 in fiscal year 1983.

(d) Availability of appropriations

Beginning fiscal year 1979, sums appropriated for purposes of this section shall remain available until expended.

(Pub. L. 86-523, § 7, formerly § 4, June 27, 1960, 74 Stat. 221, renumbered and amended Pub. L. 93-291, § 1(9), May 24, 1974, 88 Stat. 175; Pub. L. 95-625, title VI, § 603, Nov. 10, 1978, 92 Stat. 3518.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-625, § 603(a), (b), authorized appropriation of $500,000 for fiscal year 1979, $1,000,000 for fiscal year 1980, and $1,500,000 for fiscal years 1981 through 1983.

Subsec. (c). Pub. L. 95-625, § 603(a), (c), authorized appropriation of $3,000,000 for fiscal years 1979, and

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1980, $3,500,000 for fiscal years 1981, and 1982, and $4,000,000 for fiscal year 1983.

Subsec. (d). Pub. L. 95-625, § 603(a), (d), added subsec. (d).

1974—Subsec. (a). Pub. L. 93-291 added subsec. (a).

Subsecs. (b), (c). Pub. L. 93-291 designated existing unlettered provisions as subsecs. (b) and (c), and in subsecs. (b) and (c) as so designated substituted provisions making separate authorizations of appropriations for purposes of sections 469a-1(b) and 469a-2(a) of this title and covering fiscal years 1974, 1975, 1976, 1977, and 1978 for provisions making a general authorization of appropriations of whatever sums as might be necessary to carry out the purposes of sections 469 to 469c of this title.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Secretary or other official in Department of Interior and Secretary or other official in Department of Agriculture to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, see Transfer of Functions note set out under section 469a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 469, 469a-3, 469b, 469c-1, 469c-2, 470a, 470bb, 470hh of this title; title 42 section 5320.

§ 469c-1. "State" defined

As used in sections 469 to 469c-1 of this title, the term "State" includes the several States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

(Pub. L. 86-523, § 8, as added Pub. L. 96-205, title VI, § 608(b)(2), Mar. 12, 1980, 94 Stat. 92.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 469, 469a-3, 469b, 469c, 470a, 470dd, 470hh of this title; title 42 section 5320.

§ 469c-2. Costs for identification, surveys, evaluation and data recovery with respect to historic properties

Notwithstanding section 469c(a) of this title, or any other provision of law to the contrary—

(1) identification, surveys, and evaluation carried out with respect to historic properties within project areas may be treated for purposes of any law or rule of law as planning costs of the project and not as costs of mitigation;

(2) reasonable costs for identification, surveys, evaluation, and data recovery carried out with respect to historic properties within project areas may be charged to Federal licensees and permittees as a condition to the issuance of such license or permit; and

(3) Federal agencies, with the concurrence of the Secretary and after notification of the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate, are authorized to waive, in appropriate cases, the 1 per centum limitation contained in section 469c(a) of this title.

(Pub. L. 96-515, title II, § 208, Dec. 12, 1980, 94 Stat. 2997.)

§ 469d. Ice Age National Scientific Reserve; statement of purpose

It is the purpose of sections 469d to 469i of this title to assure protection, preservation, and interpretation of the nationally significant values of Wisconsin continental glaciation, including moraines, eskers, kames, kettleholes, drumlins, swamps, lakes, and other reminders of the ice age.

(Pub. L. 88-655, § 1, Oct. 13, 1964, 78 Stat. 1087.)

REFERENCES IN TEXT

Sections 469f and 469i, included within the reference to sections 469d to 469i, were repealed by Pub. L. 91-483, § 1, Oct. 21, 1970, 84 Stat. 1083.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 469e, 469h of this title.

§ 469e. Plan for continental glaciation

(a) Federal funds

To implement the purpose of sections 469d to 469i of this title, the Secretary of the Interior (hereinafter called the "Secretary"), in cooperation with State and local governmental authorities of Wisconsin, may formulate within two years after October 13, 1964, a comprehensive plan for the protection, preservation, and interpretation of outstanding examples of continental glaciation in Wisconsin; but he shall not spend more than $50,000 of Federal funds thereon.

(b) Copies to Congress; establishment; boundaries

When the comprehensive plan is completed and the Secretary is satisfied that State legislation exists for the preservation of the nationally significant features of the reserve, open to the people of the entire Nation, he shall transmit copies thereof to the President of the Senate and the Speaker of the House of Representatives and may, ninety days thereafter and after consulting with the Governor of the State of Wisconsin, publish notice in the Federal Register of the establishment of the Ice Age National Scientific Reserve and of the boundaries thereof, which boundaries shall comprise lands owned or to be acquired by the State and local governments of Wisconsin in the following areas:

(1) Eastern area (portions of the northern unit of the Kettle Moraine State Forest and Campbellsport drumlin area);

(2) Central area (portions of Devil's Lake State Park);

(3) Northwestern area (portions of Chippewa County);

(4) Related areas (other areas in the State of Wisconsin which the Secretary and the Governor of Wisconsin agree upon as significant examples of continental glaciation).

(c) Inclusion and exclusion of other areas

Any area outside of the national forests that the Secretary and the Governor of Wisconsin agree has significant examples of continental glaciation but is not described in the original notice may be included in the reserve by the Secretary after notice to the President of the

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Senate and the Speaker of the House of Representatives and publication in the Federal Register, as hereinbefore provided, and any area that they consider to be no longer desirable as a part of the reserve may be excluded from it by the Secretary in the same manner.

(Pub. L. 88-655, § 2, Oct. 13, 1964, 78 Stat. 1087.)

REFERENCES IN TEXT

Sections 469f and 469i, included within the reference to sections 469d to 469i, were repealed by Pub. L. 91-483, § 1, Oct. 21, 1970, 84 Stat. 1083.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 469d, 469h of this title.

§ 469f. Repealed. Pub. L. 91-483, § 1(1), Oct. 21, 1970, 84 Stat. 1083

Section, Pub. L. 88-655, § 3, Oct. 13, 1964, 78 Stat. 1087, provided for the grant of financial assistance to the State of Wisconsin of up to $750,000 for the acquisition of lands and interests in lands, subject to the terms and conditions prescribed by the Secretary.

§ 469g. Ice Age National Scientific Reserve; recommendations for Federal and State participation in financing public facilities and services

The comprehensive plan presented by the Secretary to the President of the Senate and the Speaker of the House of Representatives may include such recommendations, if any, as he and the Governor of the State of Wisconsin may wish to make with respect to Federal and State participation in the financing of appropriate interpretive and other public facilities and services within the reserve including facilities and services to be furnished by such private organizations as the Ice Age Park and Trail Foundation, a nonprofit corporation.

(Pub. L. 88-655, § 4, Oct. 13, 1964, 78 Stat. 1087; Pub. L. 91-483, § 1(2), Oct. 21, 1970, 84 Stat. 1083.)

AMENDMENTS

1970—Pub. L. 91-483 removed restriction that the Secretary make no commitment with respect to financing of facilities and services within the reserve and that no Federal appropriations be available for such purpose.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 469d, 469e, 469h of this title.

§ 469h. Comprehensive plan for Reserve Development

(a) Technical assistance

The Secretary is authorized to provide technical assistance to the State of Wisconsin for planning and development of the reserve in accordance with the comprehensive plan.

(b) Additional grants

In addition to grants made pursuant to the Land and Water Conservation Fund Act of 1965 [16 U.S.C. 460*l*-4 et seq.], the Secretary is authorized to make grants of not to exceed 25 per centum of the actual cost of each development project within the reserve in accordance with the comprehensive plan: *Provided*, That the maximum amount of such grants for all projects shall not exceed $2,500,000.

(c) Costs of maintenance

The Secretary, pursuant to an agreement with the State of Wisconsin, may pay up to 50 per centum of the annual cost of management, protection, maintenance, and rehabilitation of the reserve.

(d) Termination of Federal contributions

Whenever the Secretary determines that appropriate management and protection set down in the comprehensive plan are not being afforded the nationally significant values within the reserve or that funds are not being provided on the prescribed matching basis by the State of Wisconsin or other non-Federal sources, he may terminate contributions under sections 469d to 469i of this title.

(Pub. L. 88-655, § 5, Oct. 13, 1964, 78 Stat. 1088; Pub. L. 91-483, § 1(3), Oct. 21, 1970, 84 Stat. 1083; Pub. L. 96-199, title I, § 109, Mar. 5, 1980, 94 Stat. 69.)

REFERENCES IN TEXT

The Land and Water Conservation Fund Act of 1965, referred to in subsec. (b), is Pub. L. 88-578, Sept. 3, 1964, 78 Stat. 897, as amended, which is classified generally to part B (§ 460*l*-4 et seq.) of subchapter LXIX of chapter 1 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 460*l*-4 of this title and Tables.

Sections 469f and 469i, included within the reference to sections 469d to 469i, were repealed by Pub. L. 91-483, § 1, Oct. 21, 1970, 84 Stat. 1083.

AMENDMENTS

1980—Subsec. (b). Pub. L. 96-199 substituted "$2,500,000" for "$425,000".

1970—Pub. L. 91-483 substituted provisions authorizing the Secretary to provide technical assistance and financial grants in addition to those under the Land and Water Conservation Fund Act of 1965, not exceeding 25 percent of the actual cost of each development project and up to a maximum of $425,000 and to share equally the annual costs of management, protection, maintenance and rehabilitation of the reserve for provisions for part recovery of the funds granted in case of conversion, and use or disposal contrary to the purposes of the establishment of the Ice Age National Scientific Reserve, and reenacted provisions for the termination of the grants.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 469d, 469e of this title.

§ 469i. Repealed. Pub. L. 91-483, § 1(4), Oct. 21, 1970, 84 Stat. 1083

Section, Pub. L. 88-655, § 6, Oct. 13, 1964, 78 Stat. 1088, authorized appropriations of up to $800,000 for carrying out the provisions of sections 469d to 469i of this title.

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DEPARTMENT OF TRANSPORTATION ACT OF 1966
49 U.S.C. 1653 (f) is identical to 23 U.S.C. 138 which follows

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§ 138. Preservation of parklands

It is hereby declared to be the national policy that special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites. The Secretary of Transportation shall cooperate and consult with the Secretaries of the Interior, Housing and Urban Development, and Agriculture, and with the States in developing transportation plans and programs that include measures to maintain or enhance the natural beauty of the lands traversed. After the effective date of the Federal-Aid Highway Act of 1968, the Secretary shall not approve any program or project which requires the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from an historic site of national, State, or local significance as so determined by such officials unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such park, recreational area, wildlife and waterfowl refuge, or historic site resulting from such use. In carrying out the national policy declared in this section the Secretary, in cooperation with the Secretary of the Interior and appropriate State and local officials, is authorized to conduct studies as to the most feasible Federal-aid routes for the movement of motor vehicular traffic through or around national parks so as to best serve the needs of the traveling public while preserving the natural beauty of these areas.

(Added Pub. L. 89-574, § 15(a), Sept. 13, 1966, 80 Stat. 771, and amended Pub. L. 90-495, § 18(a), Aug. 23, 1968, 82 Stat. 823; Pub. L. 94-280, title I, § 124, May 5, 1976, 90 Stat. 440.)

REFERENCES IN TEXT

The effective date of the Federal-Aid Highway Act of 1968, referred to in text, is the effective date of Pub. L. 90-495, which was approved Aug. 23, 1968.

AMENDMENTS

1976—Pub. L. 94-280 authorized the Secretary, in cooperation with the Secretary of the Interior and appropriate State and local officials, to conduct studies as to the most feasible Federal-aid routes for the movement of motor vehicular traffic through or around national parks so as to best serve the needs of the traveling public while preserving the natural beauty of these areas.

1968—Pub. L. 90-495 amended section generally so as to render it identical to section 1653(f) of Title 49, Transportation, governing all programs and projects subject to the jurisdiction of the Secretary of Transportation.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-495 effective Aug. 23, 1968, see sectio. 37 of Pub. L. 90-495, set out as an Effective Date of 1968 Amendment note under section 101 of this title.

NATIONAL HISTORIC PRESERVATION ACT OF 1966
16 U.S.C. 470, P.L. 89-665, 80 STAT. 915
and 36 CFR Part 800

SUBCHAPTER II—NATIONAL HISTORIC PRESERVATION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 19dd, 398f, 1247 of this title; title 42 section 5320; title 43 section 1457a; title 45 section 1116.

§ 470. Short title; Congressional finding and declaration of policy

(a) This subchapter may be cited as the "National Historic Preservation Act".

(b) The Congress finds and declares that—

(1) the spirit and direction of the Nation are founded upon and reflected in its historic heritage;

(2) the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people;

(3) historic properties significant to the Nation's heritage are being lost or substantially altered, often inadvertently, with increasing frequency;

(4) the preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans;

(5) in the face of ever-increasing extensions of urban centers, highways, and residential, commercial, and industrial developments, the present governmental and nongovernmental historic preservation programs and activities are inadequate to insure future generations a genuine opportunity to appreciate and enjoy the rich heritage of our Nation;

(6) the increased knowledge of our historic resources, the establishment of better means of identifying and administering them, and the encouragement of their preservation will improve the planning and execution of Federal and federally assisted projects and will assist economic growth and development; and

(7) although the major burdens of historic preservation have been borne and major efforts initiated by private agencies and individuals, and both should continue to play a vital role, it is nevertheless necessary and appropriate for the Federal Government to accelerate its historic preservation programs and activities, to give maximum encouragement to agencies and individuals undertaking preservation by private means, and to assist State and local governments and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities.

(Pub. L. 89-665, § 1, Oct. 15, 1966, 80 Stat. 915; Pub. L. 96-515, title I, § 101(a), Dec. 12, 1980, 94 Stat. 2987.)

AMENDMENTS

1980—Pub. L. 96-515 added subsec. (a), designated existing provision as subsec. (b), and in subsec. (b) as so designated, redesignated pars. (a) to (d) as (1), (2), (5), and (7), respectively, in par. (1) as so redesignated, substituted "heritage" for "past", and added pars. (3), (4), and (6).

SHORT TITLE OF 1980 AMENDMENT

Section 1 of Pub. L. 96-515 provided: "That this Act [enacting sections 469c-2, 470-1 470a-1, 470a-2, 470h-2, 470h-3, 470u, 470v and 470w to 470w-6 of this title, amending sections 470, 470a, 470b, 470c, 470d, 470h to 470j, 470*l*, 470m, and 470r to 470t of this title and enacting provisions set out as notes under sections 470a, 470j and 470h of this title and section 874 of Title 40, Public Buildings, Property, and Works] may be cited as the 'National Historic Preservation Act Amendments of 1980'."

EX. ORD. NO. 11593. PROTECTION AND ENHANCEMENT OF THE CULTURAL ENVIRONMENT

Ex. Ord. No. 11593, May 13, 1971, 36 F.R. 8921, provided:

By virtue of the authority vested in me as President of the United States and in furtherance of the purposes and policies of the National Environmental Policy Act of 1969 (83 Stat. 852, 42 U.S.C. 4321 et seq.), the National Historic Preservation Act of 1966 (80 Stat. 915, 16 U.S.C. 470 et seq.), the Historic Sites Act of 1935 (49 Stat. 666, 16 U.S.C. 461 et seq.), and the Antiquities Act of 1906 (34 Stat. 225, 16 U.S.C. 431 et seq.), it is ordered as follows:

SECTION 1. *Policy.* The Federal Government shall provide leadership in preserving, restoring and maintaining the historic and cultural environment of the Nation. Agencies of the executive branch of the Government (hereinafter referred to as "Federal agencies") shall (1) administer the cultural properties under their control in a spirit of stewardship and trusteeship for future generations, (2) initiate measures necessary to direct their policies, plans and programs in such a way that federally owned sites, structures, and objects of historical, architectural or archaeological significance are preserved, restored and maintained for the inspiration and benefit of the people, and (3), in consultation with the Advisory Council on Historic Preservation (16 U.S.C. 4701), institute procedures to assure that Federal plans and programs contribute to the preservation and enhancement of non-federally owned sites, structures and objects of historical, architectural or archaeological significance.

SEC. 2. *Responsibilities of Federal agencies.* Consonant with the provisions of the acts cited in the first paragraph of this order, the heads of Federal agencies shall:

(a) no later than July 1, 1973, with the advice of the Secretary of the Interior, and in cooperation with the liaison officer for historic preservation for the State or territory involved, locate, inventory, and nominate to the Secretary of the Interior all sites, buildings, districts, and objects under their jurisdiction or control that appear to qualify for listing on the National Register of Historic Places.

(b) exercise caution during the interim period until inventories and evaluations required by subsection (a) are completed to assure that any federally owned property that might qualify for nomination is not inadvertently transferred, sold, demolished or substantially altered. The agency head shall refer any questionable actions to the Secretary of the Interior for an opinion respecting the property's eligibility for inclusion on the National Register of Historic Places. The Secretary shall consult with the liaison officer for historic preservation for the State or territory involved in arriving at his opinion. Where, after a reasonable period in which to review and evaluate the property, the Secretary determines that the property is likely to meet the criteria prescribed for listing on the National Register of Historic Places, the Federal agency head shall reconsider the proposal in light of national environmental and preservation policy. Where, after such reconsideration, the Federal agency head proposes to transfer, sell, demolish or substantially alter the property he shall not act with respect to the property until the Advisory Council on Historic Preservation shall have been provided an opportunity to comment on the proposal.

(c) initiate measures to assure that where as a result of Federal action or assistance a property listed on the National Register of Historic Places is to be substantially altered or demolished, timely steps be taken to make or have made records, including measured draw-

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ings, photographs and maps, of the property, and that copy of such records then be deposited in the Library of Congress as part of the Historic American Buildings Survey or Historic American Engineering Record for future use and reference. Agencies may call on the Department of the Interior for advice and technical assistance in the completion of the above records.

(d) initiate measures and procedures to provide for the maintenance, through preservation, rehabilitation, or restoration, of federally owned and registered sites at professional standards prescribed by the Secretary of the Interior.

(e) submit procedures required pursuant to subsection (d) to the Secretary of the Interior and to the Advisory Council on Historic Preservation no later than January 1, 1972, and annually thereafter, for review and comment.

(f) cooperate with purchasers and transferees of a property listed on the National Register of Historic Places in the development of viable plans to use such property in a manner compatible with preservation objectives and which does not result in an unreasonable economic burden to public or private interests.

SEC. 3. *Responsibilities of the Secretary of the Interior.* The Secretary of the Interior shall:

(a) encourage State and local historic preservation officials to evaluate and survey federally owned historic properties and, where appropriate, to nominate such properties for listing on the National Register of Historic Places.

(b) develop criteria and procedures to be applied by Federal agencies in the reviews and nominations required by section 2(a). Such criteria and procedures shall be developed in consultation with the affected agencies.

(c) expedite action upon nominations to the National Register of Historic Places concerning federally owned properties proposed for sale, transfer, demolition or substantial alteration.

(d) encourage State and Territorial liaison officers for historic preservation to furnish information upon request to Federal agencies regarding their properties which have been evaluated with respect to historic, architectural or archaeological significance and which as a result of such evaluations have not been found suitable for listing on the National Register of Historic Places.

(e) develop and make available to Federal agencies and State and local governments information concerning professional methods and techniques for preserving, improving, restoring and maintaining historic properties.

(f) advise Federal agencies in the evaluation, identification, preservation, improvement, restoration and maintenance of historic properties.

(g) review and evaluate the plans of transferees of surplus Federal properties transferred for historic monument purposes to assure that the historic character of such properties is preserved in rehabilitation, restoration, improvement, maintenance and repair of such properties.

(h) review and comment upon Federal agency procedures submitted pursuant to section 2(e) of this order.

RICHARD NIXON.

§ 470-1. Declaration of policy of the Federal Government

It shall be the policy of the Federal Government, in cooperation with other nations and in partnership with the States, local governments, Indian tribes, and private organizations and individuals to—

(1) use measures, including financial and technical assistance, to foster conditions under which our modern society and our prehistoric and historic resources can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations;

(2) provide leadership in the preservation of the prehistoric and historic resources of the United States and of the international community of nations;

(3) administer federally owned, administered, or controlled prehistoric and historic resources in a spirit of stewardship for the inspiration and benefit of present and future generations;

(4) contribute to the preservation of nonfederally owned prehistoric and historic resources and give maximum encouragement to organizations and individuals undertaking preservation by private means;

(5) encourage the public and private preservation and utilization of all usable elements of the Nation's historic built environment; and

(6) assist State and local governments and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities.

(Pub. L. 89-665, § 2, as added Pub. L. 96-515, title I, § 101(a), Dec. 12, 1980, 94 Stat. 2988.)

§ 470a. Historic preservation program

(a) National Register of Historic Places; designation of properties as historic landmarks; properties deemed included; criteria; nomination of properties by States, local governments or individuals; regulations

(1)(A) The Secretary of the Interior is authorized to expand and maintain a National Register of Historic Places composed of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture.

(B) Properties meeting the criteria for National Historic Landmarks established pursuant to paragraph (2) shall be designated as "National Historic Landmarks" and included on the National Register, subject to the requirements of paragraph (6). All historic properties included on the National Register on December 12, 1980, shall be deemed to be included on the National Register as of their initial listing for purposes of this subchapter. All historic properties listed in the Federal Register of February 6, 1979, as "National Historic Landmarks" or thereafter prior to the effective date of this Act are declared by Congress to be National Historic Landmarks of national historic significance as of their initial listing as such in the Federal Register for purposes of this subchapter and sections 461 to 467 of this title; except that in cases of National Historic Landmark districts for which no boundaries have been established, boundaries must first be published in the Federal Register and submitted to the Committee on Energy and Natural Resources of the United States Senate and to the Committee on Interior and Insular Affairs of the United States House of Representatives.

(2) The Secretary in consultation with national historical and archaeological associations, shall establish or revise criteria for properties to be included on the National Register and criteria for National Historic Landmarks, and

shall also promulgate or revise regulations as may be necessary for—

(A) nominating properties for inclusion in, and removal from, the National Register and the recommendation of properties by certified local governments;

(B) designating properties as National Historic Landmarks and removing such designation;

(C) considering appeals from such recommendations, nominations, removals, and designations (or any failure or refusal by a nominating authority to nominate or designate);

(D) nominating historic properties for inclusion in the World Heritage List in accordance with the terms of the Convention concerning the Protection of the World Cultural and Natural Heritage;

(E) making determinations of eligibility of properties for inclusion on the National Register; and

(F) notifying the owner of a property, any appropriate local governments, and the general public, when the property is being considered for inclusion on the National Register, for designation as a National Historic Landmark or for nomination to the World Heritage List.

(3) Subject to the requirements of paragraph (6), any State which is carrying out a program approved under subsection (b) of this section, shall nominate to the Secretary properties which meet the criteria promulgated under subsection (a) of this section for inclusion on the National Register. Subject to paragraph (6), and any property nominated under this paragraph or under section 470h-2(a)(2) of this title shall be included on the National Register on the date forty-five days after receipt by the Secretary of the nomination and the necessary documentation, unless the Secretary disapproves such nomination within such forty-five day period or unless an appeal is filed under paragraph (5).

(4) Subject to the requirements of paragraph (6) the Secretary may accept a nomination directly from any person or local government for inclusion of a property on the National Register only if such property is located in a State where there is no program approved under subsection (b) of this section. The Secretary may include on the National Register any property for which such a nomination is made if he determines that such property is eligible in accordance with the regulations promulgated under paragraph (2). Such determination shall be made within ninety days from the date of the nomination unless the nomination is appealed under paragraph (5).

(5) Any person or local government may appeal to the Secretary a nomination of any historic property for inclusion on the National Register and may appeal to the Secretary the failure or refusal of a nominating authority to nominate a property in accordance with this subsection.

(6) The Secretary shall promulgate regulations requiring that before any property or district may be included on the National Register or designated as a National Historic Landmark, the owner or owners of such property, or a majority of the owners of the properties within the district in the case of an historic district, shall be given the opportunity (including a reasonable period of time) to concur in, or object to, the nomination of the property or district for such inclusion or designation. If the owner or owners of any privately owned property, or a majority of the owners of such properties within the district in the case of an historic district, object to such inclusion or designation, such property shall not be included on the National Register or designated as a National Historic Landmark until such objection is withdrawn. The Secretary shall review the nomination of the property or district where any such objection has been made and shall determine whether or not the property or district is eligible for such inclusion or designation, and if the Secretary determines that such property or district is eligible for such inclusion or designation, he shall inform the Advisory Council on Historic Preservation, the appropriate State Historic Preservation Officer, the appropriate chief elected local official and the owner or owners of such property, of his determination. The regulations under this paragraph shall include provisions to carry out the purposes of this paragraph in the case of multiple ownership of a single property.

(7) The Secretary shall promulgate, or revise, regulations—

(A) ensuring that significant prehistoric and historic artifacts, and associated records, subject to section 470h-2 of this title, the Act of June 27, 1960 (16 U.S.C. 469c) [16 U.S.C. 469 et seq.], and the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa and following) are deposited in an institution with adequate long-term curatorial capabilities;

(B) establishing a uniform process and standards for documenting historic properties by public agencies and private parties for purposes of incorporation into, or complementing, the national historical architectural and engineering records within the Library of Congress; and

(C) certifying local governments, in accordance with subsection (c)(1) of this section and for the allocation of funds pursuant to section 470c(c) of this title.

(b) Regulations for State Historic Preservation Programs; periodic evaluations and fiscal audits of State programs; administration of State programs; contracts and cooperative agreements with nonprofit or educational institutions; treatment of State programs as approved programs

(1) The Secretary, in consultation with the National Conference of State Historic Preservation Officers and the National Trust for Historic Preservation, shall promulgate or revise regulations for State Historic Preservation Programs. Such regulations shall provide that a State program submitted to the Secretary under this section shall be approved by the Secretary if he determines that the program—

(A) provides for the designation and appointment by the Governor of a "State Historic Preservation Officer" to administer such

program in accordance with paragraph (3) and for the employment or appointment by such officer of such professionally qualified staff as may be necessary for such purposes;

(B) provides for an adequate and qualified State historic preservation review board designated by the State Historic Preservation Officer unless otherwise provided for by State law; and

(C) provides for adequate public participation in the State Historic Preservation Program, including the process of recommending properties for nomination to the National Register.

(2) Periodically, but not less than every four years after the approval of any State program under this subsection, the Secretary shall evaluate such program to make a determination as to whether or not it is in compliance with the requirements of this subchapter. If at any time, the Secretary determines that a State program does not comply with such requirements, he shall disapprove such program, and suspend in whole or in part assistance to such State under subsection (d)(1) of this section, unless there are adequate assurances that the program will comply with such requirements within a reasonable period of time. The Secretary may also conduct periodic fiscal audits of State programs approved under this section.

(3) It shall be the responsibility of the State Historic Preservation Officer to administer the State Historic Preservation Program and to—

(A) in cooperation with Federal and State agencies, local governments, and private organizations and individuals, direct and conduct a comprehensive statewide survey of historic properties and maintain inventories of such properties;

(B) identify and nominate eligible properties to the National Register and otherwise administer applications for listing historic properties on the National Register;

(C) prepare and implement a comprehensive statewide historic preservation plan;

(D) administer the State program of Federal assistance for historic preservation within the State;

(E) advise and assist, as appropriate, Federal and State agencies and local governments in carrying out their historic preservation responsibilities;

(F) cooperate with the Secretary, the Advisory Council on Historic Preservation, and other Federal and State agencies local governments, and organizations and individuals to ensure that historic properties are taken into consideration at all levels of planning and development;

(G) provide public information, education, and training and technical assistance relating to the Federal and State Historic Preservation Programs; and

(H) cooperate with local governments in the development of local historic preservation programs and assist local governments in becoming certified pursuant to subsection (c) of this section.

(4) Any State may carry out all or any part of its responsibilities under this subsection by contract or cooperative agreement with any qualified nonprofit organization or educational institution.

(5) Any State historic preservation program in effect under prior authority of law may be treated as an approved program for purposes of this subsection until the earlier of—

(A) the date on which the Secretary approves a program submitted by the State under this subsection, or

(B) three years after December 12, 1980.

(c) Certification of local governments by State Historic Preservation Officer; transfer of portion of grants; certification by Secretary; nomination of properties by local governments for inclusion on National Register

(1) Any State program approved under this section shall provide a mechanism for the certification by the State Historic Preservation Officer of local governments to carry out the purposes of this subchapter and provide for the transfer, in accordance with section 470c(c) of this title, of a portion of the grants received by the States under this subchapter, to such local governments. Any local government shall be certified to participate under the provisions of this section if the applicable State Historic Preservation Officer, and the Secretary, certifies that the local government—

(A) enforces appropriate State or local legislation for the designation and protection of historic properties;

(B) has established an adequate and qualified historic preservation review commission by State or local legislation;

(C) maintains a system for the survey and inventory of historic properties that furthers the purposes of subsection (b) of this section;

(D) provides for adequate public participation in the local historic preservation program, including the process of recommending properties for nomination to the National Register; and

(E) satisfactorily performs the responsibilities delegated to it under this subchapter.

Where there is no approved State program, a local government may be certified by the Secretary if he determines that such local government meets the requirements of subparagraphs (A) through (E); and in any such case the Secretary may make grants-in-aid to the local government for purposes of this section.

(2)(A) Before a property within the jurisdiction of the certified local government may be considered by the State to be nominated to the Secretary for inclusion on the National Register, the State Historic Preservation Officer shall notify the owner, the applicable chief local elected official, and the local historic preservation commission. The commission, after reasonable opportunity for public comment, shall prepare a report as to whether or not such property, in its opinion, meets the criteria of the National Register. Within sixty days of notice from the State Historic Preservation Officer, the chief local elected official shall transmit the report of the commission and his recommendation to the State Historic Preservation Officer. Except as provided in subpara-

graph (B), after receipt of such report and recommendation, or if no such report and recommendation are received within sixty days, the State shall make the nomination pursuant to subsection (a) of this section. The State may expedite such process with the concurrence of the certified local government.

(B) If both the commission and the chief local elected official recommend that a property not be nominated to the National Register, the State Historic Preservation Officer shall take no further action, unless within thirty days of the receipt of such recommendation by the State Historic Preservation Officer an appeal is filed with the State. If such an appeal is filed, the State shall follow the procedures for making a nomination pursuant to subsection (a) of this section. Any report and recommendations made under this section shall be included with any nomination submitted by the State to the Secretary.

(3) Any local government certified under this section or which is making efforts to become so certified shall be eligible for funds under the provisions of section 470c(c) of this title, and shall carry out any responsibilities delegated to it in accordance with such terms and conditions as the Secretary deems necessary or advisable.

(d) Matching grants-in-aid to States for programs and projects; matching grant-in-aid to National Trust for Historic Preservation in the United States; program of direct grants for preservation of properties included on National Register; grants or loans to Indian tribes and ethnic or minority groups for preservation of cultural heritage

(1) The Secretary shall administer a program of matching grants-in-aid to the States for historic preservation projects, and State historic preservation programs, approved by the Secretary and having as their purpose the identification of historic properties and the preservation of properties included on the National Register.

(2) The Secretary shall administer a program of matching grant-in-aid to the National Trust for Historic Preservation in the United States, chartered by sections 468 to 468e of this title, for the purposes of carrying out the responsibilities of the National Trust.

(3)(A) In addition to the programs under paragraphs (1) and (2), the Secretary shall administer a program of direct grants for the preservation of properties included on the National Register. Funds to support such program annually shall not exceed 10 per centum of the amount appropriated annually for the fund established under section 470h of this title. These grants may be made by the Secretary, in consultation with the appropriate State Historic Preservation Officer—

(i) for the preservation of National Historic Landmarks which are threatened with demolition or impairment and for the preservation of historic properties of World Heritage significance,

(ii) for demonstration projects which will provide information concerning professional methods and techniques having application to historic properties,

(iii) for the training and development of skilled labor in trades and crafts, and in analysis and curation, relating to historic preservation; [1] and

(iv) to assist persons or small businesses within any historic district included in the National Register to remain within the district.

(B) The Secretary may also, in consultation with the appropriate State Historic preservation Officer, make grants or loans or both under this section to Indian tribes and to nonprofit organizations representing ethnic or minority groups for the preservation of their cultural heritage.

(C) Grants may be made under subparagraph (A)(i) and (iv) only to the extent that the project cannot be carried out in as effective a manner through the use of an insured loan under section 470d of this title.

(e) Prohibition of use of funds for compensation of intervenors in preservation program

No part of any grant made under this section may be used to compensate any person intervening in any proceeding under this subchapter.

(f) Guidelines for Federal agency responsibility for agency-owned historic properties

In consultation with the Advisory Council on Historic Preservation, the Secretary shall promulgate guidelines for Federal agency responsibilities under section 470h-2 of this title.

(g) Professional standards for preservation of federally owned or controlled historic properties

Within one year after December 12, 1980, the Secretary shall establish, in consultation with the Secretaries of Agriculture and Defense, the Smithsonian Institution, and the Administrator of the General Services Administration, professional standards for the preservation of historic properties in Federal ownership or control.

(h) Dissemination of information concerning professional methods and techniques for preservation of historic properties

The Secretary shall develop and make available to Federal agencies, State and local governments, private organizations and individuals, and other nations and international organizations pursuant to the World Heritage Convention, training in, and information concerning, professional methods and techniques for the preservation of historic properties and for the administration of the historic preservation program at the Federal, State, and local level. The Secretary shall also develop mechanisms to provide information concerning historic preservation to the general public including students.

(Pub. L. 89-665, title I, § 101, Oct. 15, 1966, 80 Stat. 915; Pub. L. 93-54, § 1(d), July 1, 1973, 87 Stat. 139; Pub. L. 91-383, § 11, as added Pub. L. 94-458, § 2, Oct. 7, 1976, 90 Stat. 1942, and amended Pub. L. 96-205, title VI, § 608(a)(1), (2), Mar. 12, 1980, 94 Stat. 92; Pub. L. 96-515, title II, § 201(a), Dec. 12, 1980, 94 Stat. 2988.)

[1] So in original. The semicolon probably should be a comma.

REFERENCES IN TEXT

The effective date of this Act, referred to in subsec. (a)(1)(B), probably means the effective date of the National Historic Preservation Act Amendments of 1980, Pub. L. 96-515, approved Dec. 12, 1980, rather than the effective date of the National Historic Preservation Act, Pub. L. 89-665, which was approved Oct. 15, 1966.

The Act of June 27, 1960 (16 U.S.C. 469c), referred to in subsec. (a)(7)(A), is Pub. L. 86-523, June 27, 1960, 74 Stat. 220, as amended, which enacted sections 469 to 469c-1 of this title. For complete classification of this Act to the Code, see Tables.

The Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa and following), referred to in subsec. (a)(7)(A), is Pub. L. 96-95, Oct. 31, 1979, 93 Stat. 721, which is classified generally to chapter 1B (§ 470aa et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 470aa of this title and Tables.

Section 468e of this title, referred to in subsec. (d)(2), was repealed by Pub. L. 86-533, § 1(19), June 29, 1960, 74 Stat. 248.

AMENDMENTS

1980—Subsec. (a). Pub. L. 96-515 substituted provision designating certain properties as National Historical Landmarks, providing for establishment by the Secretary of Interior of criteria for inclusion on or removal from the National Register, designation of properties as National Historical Landmarks and removal of such designation, and nomination of properties for inclusion in the World Heritage List, authorizing any State, local government, or person to nominate properties for inclusion on the National Register and to appeal a nomination or refusal to nominate, requiring that before property be included on the National Register or designated as a National Historic Landmark, the owner or owners of the property be given an opportunity to concur in, or object to, its inclusion, and authorizing the Secretary to promulgate regulations to ensure that significant prehistoric and historic artifacts and records receive proper treatment, to establish standards for documenting historic properties for incorporation in the national historical, architectural, and engineering records within the Library of Congress, and to certify local governments for allocation of funds, for provision authorizing the Secretary to grant funds to States for preparing comprehensive statewide historic surveys and plans for preservation and acquisition of historic properties, to establish programs of matching grants-in-aid to States for the purpose of historical preservation and to the National Trust for Historic Preservation in the United States for the purpose of carrying out the responsibilities of the National Trust, and to withhold from disclosure to the public, information relating to the location of sites or objects listed on the National Register whenever he determines that disclosure of specific information would create a risk of destruction or harm to such sites or objects.

Pub. L. 96-205, § 608(a)(1), in par. (2) struck out "and" following "culture;", and in par. (3) substituted "Trust; and" for "Trust.".

Subsec. (b). Pub. L. 96-515 substituted provision authorizing the establishment of State Historic Preservation Programs, providing for periodic evaluation of these programs and periodic fiscal audits, prescribing the responsibilities of the State Historic Preservation Officer, and designating the period within which prior State historic preservation programs are to remain in effect for provision defining the terms "State", "project", "historic preservation", and "Secretary".

Pub. L. 96-205, § 608(a)(2), added reference to the Commonwealth of the Northern Mariana Islands.

Subsecs. (c) to (h). Pub. L. 96-515 adds subsecs. (c) to (h).

1976—Subsec. (a)(4). Pub. L. 91-383, § 11, as added Pub. L. 94-458, § 2, added par. (4).

1973—Subsec. (b)(1). Pub. L. 93-54 defined "State" to include the Trust Territory of the Pacific Islands.

PRESERVATION AND CONSERVATION OF INTANGIBLE ASPECTS OF AMERICAN CULTURAL HERITAGE; REPORT TO PRESIDENT AND CONGRESS

Section 502 of Pub. L. 96-515 directed the Secretary, in cooperation with the American Folklife Center of the Library of Congress to submit within two years after Dec. 12, 1980, a report to the President and the Congress on preserving and conserving the intangible elements of our cultural heritage such as arts, skills, folklife, and folkways, the report to take into account the view of other public and private organizations, as appropriate, and to include recommendations for legislative and administrative actions by the Federal Government in order to preserve, conserve, and encourage the continuation of the diverse traditional prehistoric, historic, ethnic, and folk cultural traditions that underlie and are a living expression of our American heritage.

COORDINATED SYSTEM OF CULTURAL PARKS AND HISTORIC CONSERVATION DISTRICTS; COMPREHENSIVE STUDY AND FORMULATION OF RECOMMENDATIONS; REPORT TO PRESIDENT AND CONGRESS

Section 506 of Pub. L. 96-515 directed the Secretary to undertake a comprehensive study and formulate recommendations for a coordinated system of cultural parks and historic conservation districts that provide for the preservation, interpretation, development, and use by public and private entities of the prehistoric, historic, architectural, cultural, and recreational resources found in definable urban areas throughout the Nation; the study to propose alternatives concerning the management and funding of such system by public and private entities and by various levels of government; and the Secretary to submit a report of his study and recommendations to the President and the Congress within two years after Dec. 12, 1980.

FIRE IN HISTORIC PROPERTIES; PROTECTIVE MEASURES; REPORT TO PRESIDENT AND CONGRESS

Section 507 of Pub. L. 96-515 directed the Secretary, in cooperation with the Secretary of the Treasury, the Administrator of the United States Fire Administration, and the Administrator of the Federal Insurance Administration, to submit a report to the President and the Congress on fire in historic properties, such report to include a review of Federal laws to determine any relationship between these laws and arson or fire by 'suspicious origin', to make recommendations respecting amendments to such laws should a correlation be found to exist, to include the feasibility and necessity of establishing or developing protective measures at the Federal, State, or local level for the prevention, detection, and control of arson or fire by 'suspicious origin' in historic properties, to include recommendations regarding the Federal role in assisting the States and local governments with protecting historic properties from damage by fire, and to be submitted within eighteen months after Dec. 12, 1980.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 398f, 410cc-22, 410cc-32, 470b, 470c, 470d, 470h-1, 470h-2, 470w of this title; title 40 section 612a.

§ 470a-1. World Heritage Convention

(a) United States participation

The Secretary of the Interior shall direct and coordinate United States participation in the Convention Concerning the Protection of the World Cultural and Natural Heritage, approved by the Senate on October 26, 1973, in cooperation with the Secretary of State, the Smithsoni-

an Institution, and the Advisory Council on Historic Preservation. Whenever possible, expenditures incurred in carrying out activities in cooperation with other nations and international organizations shall be paid for in such excess currency of the country or area where the expense is incurred as may be available to the United States.

(b) Nomination of property to World Heritage Committee

The Secretary of the Interior shall periodically nominate properties he determines are of international significance to the World Heritage Committee on behalf of the United States. No property may be so nominated unless it has previously been determined to be of national significance. Each such nomination shall include evidence of such legal protections as may be necessary to ensure preservation of the property and its environment (including restrictive covenants, easements, or other forms of protection). Before making any such nomination, the Secretary shall notify the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate.

(c) Nomination of non-Federal property to World Heritage Committee

No non-Federal property may be nominated by the Secretary of the Interior to the World Heritage Committee for inclusion on the World Heritage List unless the owner of the property concurs in writing to such nomination.

(Pub. L. 96-515, title IV, § 401, Dec. 12, 1980, 94 Stat. 3000.)

CODIFICATION

Section was enacted as part of the National Historic Preservation Act Amendments of 1980, and not as part of the National Historic Preservation Act, Pub. L. 89-665, which is classified generally to this subchapter.

§ 470a-2. Federal undertakings outside United States; mitigation of adverse effects

Prior to the approval of any Federal undertaking outside the United States which may directly and adversely affect a property which is on the World Heritage List or on the applicable country's equivalent of the National Register, the head of a Federal agency having direct or indirect jurisdiction over such undertaking shall take into account the effect of the undertaking on such property for purposes of avoiding or mitigating any adverse effects.

(Pub. L. 96-515, title IV, § 402, Dec. 12, 1980, 94 Stat. 3000.)

CODIFICATION

Section was enacted as part of the National Historic Preservation Act Amendments of 1980, and not as part of the National Historic Preservation Act, Pub. L. 89-665, which is classified generally to this subchapter.

§ 470b. Requirements for awarding of grant funds

(a) Grant applications; amounts; reports; conditions

No grant may be made under this subchapter—

(1) unless application therefor is submitted to the Secretary in accordance with regulations and procedures prescribed by him;

(2) unless the application is in accordance with the comprehensive statewide historic preservation plan which has been approved by the Secretary after considering its relationship to the comprehensive statewide outdoor recreation plan prepared pursuant to the Land and Water Conservation Fund Act of 1965 (78 Stat. 897) [16 U.S.C. 460*l*-4 of this title];

(3) for more than 50 per centum of the aggregate cost of carrying out projects and programs specified in section 470a(d)(1) and (2) of this title in any one fiscal year, except that for the costs of State or local historic surveys or inventories the Secretary shall provide 70 per centum of the aggregate cost involved in any one fiscal year.

(4) unless the grantee has agreed to make such reports, in such form and containing such information as the Secretary may from time to time require;

(5) unless the grantee has agreed to assume, after completion of the project, the total cost of the continued maintenance, repair, and administration of the property in a manner satisfactory to the Secretary; and

(6) until the grantee has complied with such further terms and conditions as the Secretary may deem necessary or advisable.

Except as permitted by other law, the State share of the costs referred to in paragraph (3) shall be contributed by non-Federal sources. Notwithstanding any other provision of law, no grant made pursuant to this subchapter shall be treated as taxable income for purposes of title 26.

(b) Waiver

The Secretary may in his discretion waive the requirements of subsection (a), paragraphs (2) and (5) of this section for any grant under this subchapter to the National Trust for Historic Preservation in the United States, in which case a grant to the National Trust may include funds for the maintenance, repair, and administration of the property in a manner satisfactory to the Secretary.

(c) Repealed. Pub. L. 96-515, title II, § 202(c), Dec. 12, 1980, 94 Stat. 2993

(d) Remaining cost of project

No State shall be permitted to utilize the value of real property obtained before October 15, 1966, in meeting the remaining cost of a project for which a grant is made under this subchapter.

(Pub. L. 89-665, title I, § 102, Oct. 15, 1966, 80 Stat. 916; Pub. L. 94-422, title II, § 201(1), Sept. 28, 1976, 90 Stat. 1319; Pub. L. 96-515, title IV, § 202, Dec. 12, 1980, 94 Stat. 2993.)

REFERENCES IN TEXT

The Land and Water Conservation Fund Act of 1965, referred to in subsec. (a)(2), is Pub. L. 88-578, Sept. 3, 1964, 78 Stat. 897, as amended, which is classified generally to part B (§ 460*l*-4 et seq.) of subchapter LXIX of chapter 1 of this title. For complete classification of

this Act to the Code, see Short Title note set out under section 460*l*-4 of this title and Tables.

AMENDMENTS

1980—Subsec. (a). Pub. L. 96-515, § 202(a), (b), in par. (3) substituted provision directing that no grant be made for more than 50 per centum of the aggregate cost of carrying out projects and programs specified in section 470a(d)(1) and (2) of this title in any one fiscal year, except that for costs of State or local historic surveys or inventories the Secretary provide 70 per centum of the aggregate cost involved in any one fiscal year for provision directing that no grant be made for more than 50 per centum of the total cost involved, as determined by the Secretary, which determination was to be final, and inserted provision following cl. (6), that, except as otherwise permitted, the State share of the costs referred to in par. (3) be contributed by non-Federal sources and no grant made be treated as taxable income.

Subsec. (c). Pub. L. 96-515, § 202(c), struck out subsec. (c), which authorized the Secretary in his discretion to waive the requirements of subsec. (a)(3) of this section for the purposes of making grants for the preparation of statewide historic preservation plans and surveys and project plans and restricted any grant made pursuant to this subsection to not to exceed 70 per centum of the cost of the project, with the total cost of grants made pursuant to this subsection in any fiscal year not to exceed one-half of the funds appropriated for that fiscal year pursuant to section 470h of this title.

1976—Subsec. (a). Pub. L. 94-422 reenacted subsec. (a) without change.

Subsec. (b). Pub. L. 94-422 reenacted subsec. (b) without change.

Subsec. (c). Pub. L. 94-422 added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 94-422 redesignated former subsec. (c) as (d).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 470h-1 of this title.

§ 470b-1. Grants to National Trust for Historic Preservation

(a) Authority of Secretary of Housing and Urban Development; renovation or restoration costs; terms and conditions; amounts

The Secretary of Housing and Urban Development is authorized to make grants to the National Trust for Historic Preservation, on such terms and conditions and in such amounts (not exceeding $90,000 with respect to any one structure) as he deems appropriate, to cover the costs incurred by such Trust in renovating or restoring structures which it considers to be of historic or architectural value and which it has accepted and will maintain (after such renovation or restoration) for historic purposes.

(b) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary for the grants to be made under subsection (a) of this section.

(Pub. L. 89-754, title VI, § 603, Nov. 3, 1966, 80 Stat. 1278.)

CODIFICATION

Section was enacted as part of the Demonstration Cities and Metropolitan Development Act of 1966, and not as part of the National Historic Preservation Act, Pub. L. 89-665, which is classified generally to this subchapter.

§ 470c. Apportionment of grant funds

(a) Assistance from other Federal programs

No grant may be made by the Secretary for or on account of any survey or project under this subchapter with respect to which financial assistance has been given or promised under any other Federal program or activity, and no financial assistance may be given under any other Federal program or activity for or on account of any survey or project with respect to which assistance has been given or promised under this subchapter.

(b) Basis; notification to State; reapportionment

The amounts appropriated and made available for grants to the States for projects and programs under this subchapter for each fiscal year shall be apportioned among the States by the Secretary in accordance with needs as disclosed in approved statewide historic preservation plans.

The Secretary shall notify each State of its apportionment under this subsection within thirty days following the date of enactment of legislation appropriating funds under this subchapter. Any amount of any apportionment that has not been paid or obligated by the Secretary during the fiscal year in which such notification is given, and for two fiscal years thereafter, shall be reapportioned by the Secretary in accordance with this subsection.

(c) Transfer of funds to local governments

A minimum of 10 per centum of the annual apportionment distributed by the Secretary to each State for the purposes of carrying out this subchapter shall be transferred by the State, pursuant to the requirements of this subchapter, to local governments which are certified under section 470a(c) of this title for historic preservation projects or programs of such local governments. In any year in which the total annual apportionment to the States exceeds $65,000,000, one half of the excess shall also be transferred by the States to local governments certified pursuant to section 470a(c) of this title.

(d) Guidelines for use and distribution of funds to local governments

The Secretary shall establish guidelines for the use and distribution of funds under subsection (c) of this section to insure that no local government receives a disproportionate share of the funds available, and may include a maximum or minimum limitation on the amount of funds distributed to any single local government. The guidelines shall not limit the ability of any State to distribute more than 10 per centum of its annual apportionment under subsection (c) of this section, nor shall the Secretary require any State to exceed the 10 per centum minimum distribution to local governments.

(Pub. L. 89-665, title I, § 103, Oct. 15, 1966, 80 Stat. 916; Pub. L. 94-422, title II, § 201(2), Sept. 28, 1976, 90 Stat. 1319; Pub. L. 96-515, title II, § 203, Dec. 12, 1980, 94 Stat. 2993.)

AMENDMENTS

1980—Subsec. (b). Pub. L. 96-515, § 203(a), inserted "and programs" following "projects" and substituted provision directing the Secretary to notify each State of its apportionment under this subsection within thirty days following enactment of legislation appropriating funds for provision directing the Secretary to notify each State of its apportionment, with the amounts available thereafter for payment to such State.

Subsecs. (c), (d). Pub. L. 96-515, § 203(b), added subsecs. (c) and (d).

1976—Subsec. (a). Pub. L. 94-422 eliminated proviso that amount granted to any one State shall not exceed 50 per centum of total cost of comprehensive statewide historic survey and plan for that State, as determined by Secretary.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 470a of this title.

§ 470d. Loan insurance program for preservation of property included on National Register

(a) Establishment

The Secretary shall establish and maintain a program by which he may, upon application of a private lender, insure loans (including loans made in accordance with a mortgage) made by such lender to finance any project for the preservation of a property included on the National Register.

(b) Loan qualifications

A loan may be insured under this section only if—

(1) the loan is made by a private lender approved by the Secretary as financially sound and able to service the loan properly;

(2) the amount of the loan, and interest rate charged with respect to the loan, do not exceed such amount, and such a rate, as is established by the Secretary, by rule;

(3) the Secretary has consulted the appropriate State Historic Preservation Officer concerning the preservation of the historic property;

(4) the Secretary has determined that the loan is adequately secured and there is reasonable assurance of repayment;

(5) the repayment period of the loan does not exceed the lesser of forty years or the expected life of the asset financed;

(6) the amount insured with respect to such loan does not exceed 90 per centum of the loss sustained by the lender with respect to the loan; and

(7) the loan, the borrower, and the historic property to be preserved meet other terms and conditions as may be prescribed by the Secretary, by rule, especially terms and conditions relating to the nature and quality of the preservation work.

The Secretary shall consult with the Secretary of the Treasury regarding the interest rate of loans insured under this section.

(c) Limitation on amount of unpaid principal balance of loans

The aggregate unpaid principal balance of loans insured under this section and outstanding at any one time may not exceed the amount which has been covered into the Historic Preservation Fund pursuant to section 470h of this title and subsections (g) and (i) of this section, as in effect on December 12, 1980, but which has not been appropriated for any purpose.

(d) Assignability of insurance contracts; contract as obligation of United States; contestability

Any contract of insurance executed by the Secretary under this section may be assignable, shall be an obligation supported by the full faith and credit of the United States, and shall be incontestable except for fraud or misrepresentation of which the holder had actual knowledge at the time it became a holder.

(e) Conditions and methods of payment as result of loss

The Secretary shall specify, by rule and in each contract entered into under this section, the conditions and method of payment to a private lender as a result of losses incurred by the lender on any loan insured under this section.

(f) Protection of financial interests of Federal Government

In entering into any contract to insure a loan under this section, the Secretary shall take steps to assure adequate protection of the financial interests of the Federal Government. The Secretary may—

(1) in connection with any foreclosure proceeding, obtain, on behalf of the Federal Government, the property securing a loan insured under sections 470a to 470h-3 of this title; and

(2) operate or lease such property for such period as may be necessary to protect the interest of the Federal Government and to carry out subsection (g) of this section.

(g) Conveyance to governmental or nongovernmental entity of property acquired by foreclosure

(1) In any case in which a historic property is obtained pursuant to subsection (f) of this section, the Secretary shall attempt to convey such property to any governmental or nongovernmental entity under such conditions as will ensure the property's continued preservation and use; except that if, after a reasonable time, the Secretary, in consultation with the Advisory Council on Historic Preservation, determines that there is no feasible and prudent means to convey such property and to ensure its continued preservation and use, then the Secretary may convey the property at the fair market value of its interest in such property to any entity without restriction.

(2) Any funds obtained by the Secretary in connection with the conveyance of any property pursuant to paragraph (1) shall be covered into the historic preservation fund, in addition to the amounts covered into such fund pursuant to section 470h of this title and subsection (i) of this section, and shall remain available in such fund until appropriated by the Congress to carry out the purposes of this subchapter.

(h) Assessment of fees in connection with loans

The Secretary may assess appropriate and reasonable fees in connection with insuring loans under this section. Any such fees shall be

covered into the Historic Preservation Fund, in addition to the amounts covered into such fund pursuant to section 470h of this title and subsection (g) of this section, and shall remain available in such fund until appropriated by the Congress to carry out purposes of this subchapter.

(i) Treatment of loans as non-Federal funds

Notwithstanding any other provision of law, any loan insured under this section shall be treated as non-Federal funds for the purposes of satisfying any requirement of any other provision of law under which Federal funds to be used for any project or activity are conditioned upon the use of non-Federal funds by the recipient for payment of any portion of the costs of such project or activity.

(j) Authorization of appropriations for payment of losses

Effective after the fiscal year 1981 there are authorized to be appropriated, such sums as may be necessary to cover payments incurred pursuant to subsection (e) of this section.

(k) Eligibility of debt obligation for purchase, etc., by Federal Financing Bank

No debt obligation which is made or committed to be made, or which is insured or committed to be insured, by the Secretary under this section shall be eligible for purchase by, or commitment to purchase by, or sale or issuance to, the Federal Financing Bank.

(Pub. L. 89-665, title I, § 104, Oct. 15, 1966, 80 Stat. 917; Pub. L. 96-515, title II, § 204, Dec. 12, 1980, 94 Stat. 2994.)

CODIFICATION

In subsec. (c), "December 12, 1980" was substituted for "the date of enactment of this Act". "This Act" probably meant the National Historic Preservation Act Amendments of 1980 (Pub. L. 96-515) rather than the National Historic Preservation Act of 1966 (Pub. L. 89-665).

AMENDMENTS

1980—Subsec. (a). Pub. L. 96-515 substituted provision authorizing the Secretary to establish and maintain a program by which he, upon application of a private lender, insure loans made by such lender to finance any project for the preservation of a property included on the National Register for provision prohibiting grants to surveys or projects receiving assistance from any other Federal program or activity.

Subsec. (b). Pub. L. 96-515 substituted provision prescribing loan qualifications for provision authorizing the President, in order to assure consistency in policies and actions and coordination of planning, acquisition, and development assistance to States with other related Federal programs, to issue regulations as deemed desirable.

Subsecs. (c) to (k). Pub. L. 96-515 added subsecs. (c) to (k).

TRANSFER OF FUNCTIONS

Enforcement functions of Secretary or other official in Department of Interior and such functions of Secretary or other official in Department of Agriculture, insofar as they involve lands and programs under jurisdiction of that Department, related to compliance with historic preservation under sections 470 to 470a, 470b, and 470c to 470w-6 of this title with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of date of initial operation of the Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§ 102(e), (f), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 470a of this title.

§ 470e. Recordkeeping; recipients of assistance; audit

The beneficiary of assistance under this subchapter shall keep such records as the Secretary shall prescribe, including records which fully disclose the disposition by the beneficiary of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(Pub. L. 89-665, title I, § 105, Oct. 15, 1966, 80 Stat. 917.)

§ 470f. Effect of Federal undertakings upon property listed in National Register; comment by Advisory Council on Historic Preservation

The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under sections 470i to 470v of this title a reasonable opportunity to comment with regard to such undertaking.

(Pub. L. 89-665, title I, § 106, Oct. 15, 1966, 80 Stat. 917; Pub. L. 94-422, title II, § 201(3), Sept. 28, 1976, 90 Stat. 1320.)

AMENDMENTS

1976—Pub. L. 94-422 inserted "or eligible for inclusion in" following "included in".

TRANSFER OF FUNCTIONS

Enforcement functions of Secretary or other official in Department of Interior and such functions of Secretary or other official in Department of Agriculture, insofar as they involve lands and programs under jurisdiction of that Department, related to compliance with historic preservation under sections 470 to 470a, 470b, and 470c to 470w-6 of this title with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversa-

ry of date of initial operation of the Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§ 102(e), (f), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 470d, 470s, 470w of this title; title 42 section 5320.

§ 470g. White House, United States Supreme Court building, and United States Capitol not included in program for preservation of historical properties

Nothing in this subchapter shall be construed to be applicable to the White House and its grounds, the Supreme Court building and its grounds, or the United States Capitol and its related buildings and grounds.

(Pub. L. 89-665, title I, § 107, Oct. 15, 1966, 80 Stat. 917.)

§ 470h. Historic Preservation Fund; establishment; appropriations; source of revenue

To carry out the provisions of this subchapter, there is hereby established the Historic Preservation Fund (hereafter referred to as the "fund") in the Treasury of the United States. There shall be covered into such fund $24,400,000 for fiscal year 1977, $100,000,000 for fiscal year 1978, $100,000,000 for fiscal year 1979, $150,000,000 for fiscal year 1980, and $150,000,000 for fiscal year 1981, and $150,000,000 for each of fiscal years 1982 through 1987, from revenues due and payable to the United States under the Outer Continental Shelf Lands Act (67 Stat. 462, 469), as amended (43 U.S.C. 338 [1]), and/or under section 7433(b) of title 10, notwithstanding any provision of law that such proceeds shall be credited to miscellaneous receipts of the Treasury. Such moneys shall be used only to carry out the purposes of this subchapter and shall be available for expenditure only when appropriated by the Congress. Any moneys not appropriated shall remain available in the fund until appropriated for said purposes: *Provided*, That appropriations made pursuant to this paragraph may be made without fiscal year limitation.

(Pub. L. 89-665, title I, § 108, Oct. 15, 1966, 80 Stat. 917; Pub. L. 91-243, § 1(a), May 9, 1970, 84 Stat. 204; Pub. L. 93-54, § 1(a), July 1, 1973, 87 Stat. 139; Pub. L. 94-422, title II, § 201(4), Sept. 28, 1976, 90 Stat. 1320; Pub. L. 96-515, title II, § 205, Dec. 12, 1980, 94 Stat. 2995.)

REFERENCES IN TEXT

The Outer Continental Shelf Lands Act, referred to in text, is act Aug. 7, 1953, ch. 345, 67 Stat. 462, as amended, which is classified generally to subchapter III (§ 1331 et seq.) of chapter 29 of Title 43, Public Lands. Section 9 of the Act (43 U.S.C. 1338) provides for the disposition of revenues. For complete classification of this Act to the Code, see Short Title note set out under section 1331 of Title 43 and Tables.

CODIFICATION

"Section 7433(b) of title 10" was substituted for "the Act of June 4, 1920 (41 Stat. 813), as amended (30 U.S.C. 191)", which was classified to section 524 of former Title 34, Navy, on authority of act Aug. 10, 1956, ch. 1041, § 49(b), 70A Stat. 640, the first section of which enacted Title 10, Armed Forces.

AMENDMENTS

1980—Pub. L. 96-515 inserted "and $150,000,000 for each of fiscal years 1982 through 1987" following "1981".

1976—Pub. L. 94-422 substituted provisions establishing Historic Preservation Fund which contains appropriations obtained from revenues due and payable to United States pursuant to Outer Continental Shelf Lands Act and Act June 4, 1920 to carry out provisions of sections 470 to 470t of this title for provisions authorizing appropriations to carry out provisions of sections 470a, 470b, and 470c to 470h of this title of not more than $15,600,000 in fiscal year 1974, $20,000,000 in fiscal year 1975, and $24,400,000 in fiscal year 1976 to remain available until expended.

1973—Pub. L. 93-54 substituted appropriations authorization of $15,600,000, $20,000,000 and $24,400,000 for fiscal years 1974 through 1976, respectively, for such authorization of $7,000,000, $10,000,000, and $15,000,000 for fiscal years 1971 through 1973, respectively.

1970—Pub. L. 91-243 substituted provisions authorizing appropriations of not more than $7,000,000 for fiscal year 1971, and $10,000,000 and $15,000,000 for fiscal years 1972 and 1973, respectively, to carry out the provisions of sections 470a, 470b, and 470c, to 470h of this title for provisions authorizing the appropriation of not to exceed $2,000,000 for fiscal year 1967 and not more than $10,000,000 for the three succeeding fiscal years to carry out the provisions of sections 470 to 470b, and 470c to 470n of this title.

REVIEW OF OPERATION OF HISTORIC PRESERVATION FUND AND NATIONAL HISTORIC PRESERVATION PROGRAM; REPORT TO PRESIDENT AND CONGRESS

Section 504 of Pub. L. 96-515 provided that: "The Secretary shall submit a report directly to the President and the Congress on or before June 1, 1986, reviewing the operation of the Historic Preservation Fund and the national historic preservation program since the enactment of this Act [Dec. 12, 1980] and recommending appropriate funding levels, the time period for the reauthorization for appropriations from the fund, and other appropriate legislative action to be undertaken upon the expiration of the current fund authorization."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 470a, 470d, 470h-1 of this title.

§ 470h-1. Acceptance of privately donated funds by Secretary

(a) Authorization; use of funds

In furtherance of the purposes of this subchapter, the Secretary may accept the donation of funds which may be expended by him for projects to acquire, restore, preserve, or recover data from any district, building, structure, site, or object which is listed on the National Register of Historic Places established pursuant to section 470a of this title, so long as the project is owned by a State, any unit of local government, or any nonprofit entity.

(b) Consideration of factors respecting expenditure of funds

In expending said funds, the Secretary shall give due consideration to the following factors: the national significance of the project; its his-

[1] So in original. Should be "1338".

torical value to the community; the imminence of its destruction or loss; and the expressed intentions of the donor. Funds expended under this subsection shall be made available without regard to the matching requirements established by section 470b of this title but the recipient of such funds shall be permitted to utilize them to match any grants from the Historic Preservation Fund established by section 470h of this title.

(c) Transfer of unobligated funds

The Secretary is hereby authorized to transfer unobligated funds previously donated to the Secretary for the purposes of the National Park Service, with the consent of the donor, and any funds so transferred shall be used or expended in accordance with the provisions of this subchapter.

(Pub. L. 89-665, title I, § 109, as added Pub. L. 96-244, § 1, May 19, 1980, 94 Stat. 346.)

§ 470h-2. Historic properties owned or controlled by Federal agencies

(a) Responsibilities of Federal agencies; program for location, inventory and nomination

(1) The heads of all Federal agencies shall assume responsibility for the preservation of historic properties which are owned or controlled by such agency. Prior to acquiring, constructing, or leasing buildings for purposes of carrying out agency responsibilities, each Federal agency shall use, to the maximum extent feasible, historic properties available to the agency. Each agency shall undertake, consistent with the preservation of such properties and the mission of the agency and the professional standards established pursuant to section 470a(f) of this title, any preservation, as may be necessary to carry out this section.

(2) With the advice of the Secretary and in cooperation with the State historic preservation officer for the State involved, each Federal agency shall establish a program to locate, inventory, and nominate to the Secretary all properties under the agency's ownership or control by the agency, that appear to qualify for inclusion on the National Register in accordance with the regulations promulgated under section 470a(a)(2)(A) of this title. Each Federal agency shall exercise caution to assure that any such property that might qualify for inclusion is not inadvertently transferred, sold, demolished, substantially altered, or allowed to deteriorate significantly.

(b) Records on historic properties to be altered or demolished; deposit in Library of Congress or other appropriate agency

Each Federal agency shall initiate measures to assure that where, as a result of Federal action or assistance carried out by such agency, an historic property is to be substantially altered or demolished, timely steps are taken to make or have made appropriate records, and that such records then be deposited, in accordance with section 470a(a) of this title, in the Library of Congress or with such other appropriate agency as may be designated by the Secretary, for future use and reference.

(c) Agency Preservation Officer; responsibilities; qualifications

The head of each Federal agency shall, unless exempted under section 470v of this title, designate a qualified official to be known as the agency's "preservation officer" who shall be responsible for coordinating that agency's activities under this subchapter. Each Preservation Officer may, in order to be considered qualified, satisfactorily complete an appropriate training program established by the Secretary under section 470a(g) of this title.

(d) Agency programs and projects

Consistent with the agency's missions and mandates, all Federal agencies shall carry out agency programs and projects (including those under which any Federal assistance is provided or any Federal license, permit, or other approval is required) in accordance with the purposes of this subchapter and, give consideration to programs and projects which will further the purposes of this subchapter.

(e) Review of plans of transferees of surplus federally owned historic properties

The Secretary shall review and approve the plans of transferees of surplus federally owned historic properties not later than ninety days after his receipt of such plans to ensure that the prehistorical, historical, architectural, or culturally significant values will be preserved or enhanced.

(f) Planning and actions to minimize harm to National Historic Landmarks

Prior to the approval of any Federal undertaking which may directly and adversely affect any National Historic Landmark, the head of the responsible Federal agency shall, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to such landmark, and shall afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking.

(g) Costs of preservation as eligible project costs

Each Federal agency may include the costs of preservation activities of such agency under this subchapter as eligible project costs in all undertakings of such agency or assisted by such agency. The eligible project costs may also include amounts paid by a Federal agency to any State to be used in carrying out such preservation responsibilities of the Federal agency under this subchapter, and reasonable costs may be charged to Federal licensees and permittees as a condition to the issuance of such license or permit.

(h) Annual preservation awards program

The Secretary shall establish an annual preservation awards program under which he may make monetary awards in amounts of not to exceed $1,000 and provide citations for special achievement to officers and employees of Federal, State, and certified local governments in recognition of their outstanding contributions to the preservation of historic resources. Such program may include the issuance of annual

awards by the President of the United States to any citizen of the United States recommended for such award by the Secretary.

(i) Environmental impact statement

Nothing in this subchapter shall be construed to require the preparation of an environmental impact statement where such a statement would not otherwise be required under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.], and nothing in this subchapter shall be construed to provide any exemption from any requirement respecting the preparation of such a statement under such Act.

(j) Waiver of provisions in event of natural disaster or imminent threat to national security

The Secretary shall promulgate regulations under which the requirements of this section may be waived in whole or in part in the event of a major natural disaster or an imminent threat to the national security.

(Pub. L. 89-665, title I, § 110, as added Pub. L. 96-515, title II, § 206, Dec. 12, 1980, 94 Stat. 2996.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (i), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 470a of this title.

§ 470h-3. Lease or exchange of historic property

(a) Authorization; consultation with Advisory Council on Historic Preservation

Notwithstanding any other provision of law, any Federal agency may, after consultation with the Advisory Council on Historic Preservation, lease an historic property owned by the agency to any person or organization, or exchange any property owned by the agency with comparable historic property, if the agency head determines that the lease or exchange will adequately insure the preservation of the historic property.

(b) Proceeds of lease for administration, etc., of property; deposit of surplus proceeds into Treasury

The proceeds of any lease under subsection (a) of this section may, notwithstanding any other provision of law, be retained by the agency entering into such lease and used to defray the costs of administration, maintenance, repair, and related expenses incurred by the agency with respect to such property or other properties which are on the National Register which are owned by, or are under the jurisdiction or control of, such agency. Any surplus proceeds from such leases shall be deposited into the Treasury of the United States at the end of the second fiscal year following the fiscal year in which such proceeds were received.

(c) Contracts for management of historic property

The head of any Federal agency having responsibility for the management of any historic property may, after consultation with the Advisory Council on Historic Preservation, enter into contracts for the management of such property. Any such contract shall contain such terms and conditions as the head of such agency deems necessary or appropriate to protect the interests of the United States and insure adequate preservation of the historic property.

(Pub. L. 89-665, title I, § 111, as added Pub. L. 96-515, title II, § 207, Dec. 12, 1980, 94 Stat. 2997.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 19bb, 470d of this title.

§ 470i. Advisory Council on Historic Preservation

(a) Establishment; membership; Chairman

There is established as an independent agency of the United States Government an Advisory Council on Historic Preservation (hereinafter referred to as the "Council") which shall be composed of the following members:

(1) a Chairman appointed by the President selected from the general public;

(2) the Secretary of the Interior;

(3) the Architect of the Capitol;

(4) the Secretary of Agriculture and the heads of four other agencies of the United States (other than the Department of the Interior) the activities of which affect historic preservation, appointed by the President;

(5) one Governor appointed by the President;

(6) one mayor appointed by the President;

(7) the President of the National Conference of State Historic Preservation Officers;

(8) the Chairman of the National Trust for Historic Preservation;

(9) four experts in the field of historic preservation appointed by the President from the disciplines of architecture, history, archeology, and other appropriate disciplines; and

(10) three at-large members from the general public, appointed by the President.

(b) Designation of substitutes

Each member of the Council specified in paragraphs (2) through (8) other than (5) and (6) of subsection (a) of this section may designate another officer of his department, agency, or organization to serve on the Council in his stead, except that, in the case of paragraphs (2) and (4), no such officer other than an Assistant Secretary or an officer having major department-wide or agency-wide responsibilities may be so designated.

(c) Term of office

Each member of the Council appointed under paragraph (1), and under paragraphs (9) and (10) of subsection (a) of this section shall serve for a term of four years from the expiration of his predecessor's term; except that the members first appointed under that paragraph shall

serve for terms of one to four years, as designated by the President at the time of appointment, in such manner as to insure that the terms of not more than two of them will expire in any one year. The members appointed under paragraphs (5) and (6) shall serve for the term of their elected office but not in excess of four years. An appointed member may not serve more than two terms. An appointed member whose term has expired shall serve until that member's successor has been appointed.

(d) Vacancies; term of office of members already appointed

A vacancy in the Council shall not affect its powers, but shall be filled, not later than sixty days after such vacancy commences, in the same manner as the original appointment (and for the balance of any unexpired terms). The members of the Advisory Council on Historic Preservation appointed by the President under this subchapter as in effect on the day before December 12, 1980, shall remain in office until all members of the Council, as specified in this section, have been appointed. The members first appointed under this section shall be appointed not later than one hundred and eighty days after December 12, 1980.

(e) Designation of Vice Chairman

The President shall designate a Vice Chairman, from the members appointed under paragraph (5), (6), (9), or (10). The Vice Chairman may act in place of the Chairman during the absence or disability of the Chairman or when the office is vacant.

(f) Quorum

Nine members of the Council shall constitute a quorum.

(Pub. L. 89-665, title II, § 201, Oct. 15, 1966, 80 Stat. 917; Pub. L. 91-243, § 1(b)-(e), May 9, 1970, 84 Stat. 204; Pub. L. 93-54, § 1(c), July 1, 1973, 87 Stat. 139; Pub. L. 94-422, title II, § 201(5), Sept. 28, 1976, 90 Stat. 1320; Pub. L. 96-515, title III, § 301(a)-(f), Dec. 12, 1980, 94 Stat. 2998.)

AMENDMENTS

1980—Subsec. (a). Pub. L. 96-515, § 301(a), revised the composition of the Council by reducing the membership from twenty-nine to eighteen members, provided flexibility for Federal agencies who will be represented, ensured that appropriate expertise will be available, and provided representation for State and local governments.

Subsec. (b). Pub. L. 96-515, § 301(b), substituted "(2) through (8) (other than (5) and (6))" and "(1) through (17)" and inserted ", except that, in the case of paragraphs (2) and (4), no such officer other than an Assistant Secretary or an officer having major department-wide or agency-wide reponsibilities may be so designated" following "in his stead".

Subsec. (c). Pub. L. 96-515, § 301(c), substituted provision that the Chairman appointed by the President from the general public, each of the four experts appointed by the President, and each of the three at-large members appointed by the President from the general public serve a term of four years from the expiration of his predecessor's term, except that the members first appointed serve terms of one to four years in such a manner as to insure that the terms of not more than two of them expire in any one year, the one Governor and the one mayor appointed by the President serve for the term of their elected office but not in excess of four years, an appointed member not serve for more than two terms, and an appointed member whose term expired serve until his successor has been appointed for provision that each of the twelve members appointed by the President from outside the Federal Government serve for a term of five years from expiration of his predecessor's term, except that the members first appointed serve for terms of one to five years in such a manner as to insure that the terms of not less than one nor more than two of them expire in any one year.

Subsec. (d). Pub. L. 96-515, § 301(d), inserted provision that a vacancy be filled not later than sixty days after it commences, members of the Council appointed by the President before Dec. 12, 1980 remain in office until all members of the Council, as specified by this section, have been appointed, and members first appointed be appointed not later than 180 days after Dec. 12, 1980.

Subsec. (e). Pub. L. 96-515, § 301(e), substituted provision authorizing the President to designate a Vice Chairman from among specified members of the Council for provision authorizing the President to designate a Chairman and Vice Chairman.

Subsec. (f). Pub. L. 96-515, § 301(f), substituted "Nine" for "Fifteen".

1976—Subsec. (a)(9) to (11). Pub. L. 94-422 added pars. (9) to (11). Former pars. (9), (10), and (11) redesignated (15), (16), and (18), respectively.

Subsec. (a)(12) to (14). Pub. L. 94-422 added pars. (12) to (14).

Subsec. (a)(15), (16). Pub. L. 94-422 redesignated former pars. (9) and (10) as (15) and (16), respectively.

Subsec. (a)(17). Pub. L. 94-422 added par. (17).

Subsec. (a)(18). Pub. L. 94-422 redesignated former par. (11) as (18), and as so redesignated, substituted "twelve" for "ten".

Subsec. (b). Pub. L. 94-422 substituted "(17)" for "(10)".

Subsec. (c). Pub. L. 94-422 substituted "(18)" for "(11)".

Subsec. (d). Pub. L. 94-422 reenacted subsec. (d) without change.

Subsec. (e). Pub. L. 94-422 enlarged Presidential authority to include designation of Vice Chairman, who shall act in place of Chairman during the absence or disability of Chairman or when the office is vacant.

Subsec. (f). Pub. L. 94-422 substituted "Fifteen" for "Eleven".

Subsec. (g). Pub. L. 94-422 struck out subsec. (g) which provided that the Council shall continue in existence until Dec. 31, 1985.

1973—Subsec. (g). Pub. L. 93-54 added subsec. (g).

1970—Subsec. (a). Pub. L. 91-243, § 1(b), enlarged the Council from seventeen to twenty members, redesignated pars. (7) and (8) as (10) and (11), respectively, and added pars. (7) to (9).

Subsec. (b). Pub. L. 91-243, § 1(c) substituted "(10)" for "(6)".

Subsec. (c). Pub. L. 91-243, § 1(d) substituted "(11)" for "(8)".

Subsec. (f). Pub. L. 91-243, § 1(e) substituted "Eleven" for "Eight".

CROSS REFERENCES

Exemption from Federal Advisory Committee Act, see section 470q of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 470f, 470k, 470l, 470m, 470t of this title; title 40 section 611.

§ 470j. Functions of Council; annual report to President and Congress; recommendations

(a) Duties

The Council shall—

(1) advise the President and the Congress on matters relating to historic preservation; recommend measures to coordinate activities of Federal, State, and local agencies and private institutions and individuals relating to historic preservation; and advise on the dissemination of information pertaining to such activities;

(2) encourage, in cooperation with the National Trust for Historic Preservation and appropriate private agencies, public interest and participation in historic preservation;

(3) recommend the conduct of studies in such areas as the adequacy of legislative and administrative statutes and regulations pertaining to historic preservation activities of State and local governments and the effects of tax policies at all levels of government on historic preservation;

(4) advise as to guidelines for the assistance of State and local governments in drafting legislation relating to historic preservation;

(5) encourage, in cooperation with appropriate public and private agencies and institutions, training and education in the field of historic preservation;

(6) review the policies and programs of Federal agencies and recommend to such agencies methods to improve the effectiveness, coordination, and consistency of those policies and programs with the policies and programs carried out under this subchapter; and

(7) inform and educate Federal agencies, State and local governments, Indian tribes, other nations and international organizations and private groups and individuals as to the Council's authorized activities.

(b) Annual report

The Council shall submit annually a comprehensive report of its activities and the results of its studies to the President and the Congress and shall from time to time submit such additional and special reports as it deems advisable. Each report shall propose such legislative enactments and other actions as, in the judgment of the Council, are necessary and appropriate to carry out its recommendations and shall provide the Council's assessment of current and emerging problems in the field of historic preservation and an evaluation of the effectiveness of the programs of Federal agencies, State and local governments, and the private sector in carrying out the purposes of this subchapter.

(Pub. L. 89-665, title II, § 202, Oct. 15, 1966, 80 Stat. 918; Pub. L. 96-515, title III, § 301(g), Dec. 12, 1980, 94 Stat. 2999.)

AMENDMENTS

1980—Subsec. (a)(6), (7). Pub. L. 96-515, § 301(g)(1) added pars. (6) and (7).

Subsec. (b). Pub. L. 96-515, § 301(g)(2), inserted provision requiring in the Council's report an assessment of current and emerging problems in the field of historic preservation and an evaluation of the effectiveness of the programs of Federal agencies, State and local governments, and the private sector.

RELATIONSHIP OF FEDERAL TAX LAWS TO HISTORIC PRESERVATION; REPORT TO PRESIDENT AND CONGRESS

Section 503 of Pub. L. 96-515 directed the Advisory Council on Historic Preservation to submit a report, within one year of Dec. 12, 1980, to the President and the Congress on Federal tax laws relating to historic preservation or affecting in any manner historic preservation.

§ 470k. Cooperation between Council and instrumentalities of executive branch of Federal Government

The Council is authorized to secure directly from any department, bureau, agency, board, commission, office, independent establishment or instrumentality of the executive branch of the Federal Government information, suggestions, estimates, and statistics for the purpose of sections 470i to 470v of this title; and each such department, bureau, agency, board, commission, office, independent establishment or instrumentality is authorized to furnish such information, suggestions, estimates, and statistics to the extent permitted by law and within available funds.

(Pub. L. 89-665, title II, § 203, Oct. 15, 1966, 80 Stat. 918.)

§ 470l. Compensation of members of Council

The members of the Council specified in paragraphs (2), (3), and (4) of section 470i(a) of this title shall serve without additional compensation. The other members of the Council shall receive $100 per diem when engaged in the performance of the duties of the Council. All members of the Council shall receive reimbursement for necessary traveling and subsistence expenses incurred by them in the performance of the duties of the Council.

(Pub. L. 89-665, title II, § 204, Oct. 15, 1966, 80 Stat. 918; Pub. L. 91-243, § 1(f), May 9, 1970, 84 Stat. 204; Pub. L. 94-422, title II, § 201(6), Sept. 28, 1976, 90 Stat. 1321; Pub. L. 96-515, title III, § 301(h), Dec. 12, 1980, 94 Stat. 2999.)

AMENDMENTS

1980—Pub. L. 96-515 substituted "paragraphs (2), (3), and (4)" for "paragraphs (1) and (17)" and "other members of the Council" for "members of the Council under paragraph (18) of section 470i(a) of this title".

1976—Pub. L. 94-422 substituted "(17)" for "(10)" and "(18)" for "(11)".

1970—Pub. L. 91-243 substituted "(10)" for "(7)" and "(11)" for "(8)".

§ 470m. Administration

(a) Executive Director of Council; appointment; functions and duties

There shall be an Executive Director of the Council who shall be appointed in the competitive service by the Chairman with the concurrence of the Council. The Executive Director shall report directly to the Council and perform such functions and duties as the Council may prescribe.

(b) General Counsel; appointment; functions and duties

The Council shall have a General Counsel, who shall be appointed by the Executive Director. The General Counsel shall report directly to the Executive Director and serve as the Council's legal advisor. The Executive Director shall appoint such other attorneys as may be

necessary to assist the General Counsel, represent the Council in courts of law whenever appropriate, including enforcement of agreements with Federal agencies to which the Council is a party, assist the Department of Justice in handling litigation concerning the Council in courts of law, and perform such other legal duties and functions as the Executive Director and the Council may direct.

(e) Appointment and compensation of officers and employees

The Executive Director of the Council may appoint and fix the compensation of such officers and employees in the competitive service as are necessary to perform the functions of the Council at rates not to exceed that now or hereafter prescribed for the highest rate for grade 15 of the General Schedule under section 5332 of title 5: *Provided, however,* That the Executive Director, with the concurrence of the Chairman, may appoint and fix the compensation of not to exceed five employees in the competitive service at rates not to exceed that now or hereafter prescribed for the highest rate of grade 17 of the General Schedule under section 5332 of title 5.

(d) Appointment and compensation of additional personnel

The Executive Director shall have power to appoint and fix the compensation of such additional personnel as may be necessary to carry out its duties, without regard to the provisions of the civil service laws and chapter 51 and subchapter III of chapter 53 of title 5.

(e) Expert and consultant services; procurement

The Executive Director of the Council is authorized to procure expert and consultant services in accordance with the provisions of section 3109 of title 5.

(f) Financial and administrative services; Department of the Interior

Financial and administrative services (including those related to budgeting, accounting, financial reporting, personnel and procurement) shall be provided the Council by the Department of the Interior, for which payments shall be made in advance, or by reimbursement, from funds of the Council in such amounts as may be agreed upon by the Chairman of the Council and the Secretary of the Interior: *Provided,* That the regulations of the Department of the Interior for the collection of indebtedness of personnel resulting from erroneous payments (5 U.S.C. 5514(b)) shall apply to the collection of erroneous payments made to or on behalf of a Council employee, and regulations of said Secretary for the administrative control of funds (31 U.S.C. 1513(d), 1514) shall apply to appropriations of the Council: *And provided further,* That the Council shall not be required to prescribe such regulations.

(g) Use of funds, personnel, facilities, and services of Council members

The members of the Council specified in paragraphs (2) through (4) of section 470i(a) of this title shall provide the Council, with or without reimbursement as may be agreed upon by the Chairman and the members, with such funds, personnel, facilities, and services under their jurisdiction and control as may be needed by the Council to carry out its duties, to the extent that such funds, personnel, facilities, and services are requested by the Council and are otherwise available for that purpose. To the extent of available appropriations, the Council may obtain, by purchase, rental, donation, or otherwise, such additional property, facilities, and services as may be needed to carry out its duties and may also receive donations of moneys for such purpose, and the Executive Director is authorized, in his discretion, to accept, hold, use, expend, and administer the same for the purposes of this subchapter.

(Pub. L. 89-665, title II, § 205, Oct. 15, 1966, 80 Stat. 919; Pub. L. 91-243, § 1(g), May 9, 1970, 84 Stat. 204; Pub. L. 94-422, title II, § 201(7), Sept. 28, 1976, 90 Stat. 1321; Pub. L. 96-515, title III, § 301(i), (j), Dec. 12, 1980, 94 Stat. 2999.)

REFERENCES IN TEXT

The civil service laws, referred to in subsec. (d), are set out in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of that Title.

CODIFICATION

In subsecs. (d) and (f), "chapter 51 and subchapter III of chapter 53 of title 5" and "(5 U.S.C. 5514(b))", were substituted for "the Classification Act of 1949" and "(5 U.S.C. 46e)", respectively, on authority of Pub. L. 89-554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

In subsec. (f), "(31 U.S.C. 1513(d), 1514)" was substituted for "(31 U.S.C. 665(g))" on authority of Pub. L. 97-258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1980—Subsec. (b). Pub. L. 96-515, § 301(i), inserted ", including enforcement of agreements with Federal agencies to which the Council is a party" following "wherever appropriate".

Subsec. (g). Pub. L. 96-515, § 301(j), substituted "paragraphs (2) through (4)" for "paragraphs (1) through (16)" and inserted provision authorizing the Council to accept donations of moneys and the Executive Director, in his discretion, to accept, hold, use, expend, and administer such moneys.

1976—Subsec. (a). Pub. L. 94-422 substituted provisions authorizing appointment of the Executive Director by the Chairman and that the Executive Director shall report to the Council who shall prescribe his functions and duties for provisions designating the Director of the National Park Service or his designee as the Executive Director of the Council and incorporated provisions relating to furnishing of financial and administrative services by the Department of Interior in subsec. (f).

Subsec. (b). Pub. L. 94-422 substituted provisions authorizing appointment of a General Counsel by the Executive Director and such other attorneys as may be necessary to assist General Counsel for provisions authorizing Council to appoint and fix compensation of additional personnel as may be necessary to carry out its duties.

Subsec. (c). Pub. L. 94-422 substituted provisions authorizing Executive Director to appoint and fix the compensation of officers and employees for provisions authorizing Council to procure temporary and intermittent services to the same extent as is authorized by section 55a of title 5, but at rates not to exceed $50 per diem for individuals.

Subsec. (d). Pub. L. 94-422 substituted provisions authorizing Executive Director to appoint and fix compensation of additional personnel for provisions relating to members of Council furnishing, on a reimbursable basis, such facilities and services under their jurisdiction and control as may be needed by the Council.

Subsec. (e). Pub. L. 94-422 added subsec. (e).

Subsec. (f). Pub. L. 94-422 incorporated provisions of former subsec. (a).

Subsec. (g). Pub. L. 94-422 added subsec. (g).

1970—Subsec. (d). Pub. L. 91-243 substituted "(9)" for "(6)".

§ 470n. International Centre for Study of Preservation and Restoration of Cultural Property

(a) Authorization of participation

The participation of the United States as a member in the International Centre for the Study of the Preservation and Restoration of Cultural Property is hereby authorized.

(b) Official delegation

The Council shall recommend to the Secretary of State, after consultation with the Smithsonian Institution and other public and private organizations concerned with the technical problems of preservation, the members of the official delegation which will participate in the activities of the Centre on behalf of the United States. The Secretary of State shall appoint the members of the official delegation from the persons recommended to him by the Council.

(c) Authorization of appropriations and payments

For the purposes of this section there is authorized to be appropriated an amount equal to the assessment for United States membership in the Centre for fiscal years 1979, 1980, 1981, and 1982: *Provided*, That no appropriation is authorized and no payment shall be made to the Centre in excess of 25 per centum of the total annual assessment of such organization. Authorization for payment of such assessments shall begin in fiscal year 1981, but shall include earlier costs.

(Pub. L. 89-665, title II, § 206, as added Pub. L. 91-243, § 2, May 9, 1970, 84 Stat. 204, and amended Pub. L. 93-54, § 1(b), July 1, 1973, 87 Stat. 139; Pub. L. 94-422, title II, § 201(8), Sept. 28, 1976, 90 Stat. 1322; Pub. L. 96-199, title I, § 114, Mar. 5, 1980, 94 Stat. 71.)

AMENDMENTS

1980—Subsec. (c). Pub. L. 96-199 substituted "there is authorized to be appropriated an amount equal to the assessment for United States membership in the Centre for fiscal years 1979, 1980, 1981, and 1982" for "there are authorized to be appropriated not more than $175,000 per year for fiscal years 1977, 1978, and 1979" in the existing provisions and added provision that the authorization for the payment of assessments should begin in fiscal year 1981 but should include earlier costs.

1976—Subsec. (c). Pub. L. 94-422 substituted provisions authorizing appropriations of not more than $175,000 per year for fiscal years 1977, 1978, and 1979 for provisions authorizing appropriations of not more than $100,000 in fiscal year 1974, $100,000 in fiscal year 1975, and $125,000 in fiscal year 1976 and struck out "effective January 1, 1974," following "Provided, That".

1973—Subsec. (c). Pub. L. 93-54 added subsec. (c) and repealed former provisions authorizing appropriation of $100,000 annually for fiscal years 1971 through 1973.

§ 470o. Transfer of personnel, property, etc., by Department of the Interior to Council; time limit

So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, held, used, programed, or available or to be made available by the Department of the Interior in connection with the functions of the Council, as the Director of the Office of Management and Budget shall determine, shall be transferred from the Department to the Council within 60 days of the effective date of this Act.

(Pub. L. 89-665, title II, § 207, as added Pub. L. 94-422, title II, § 201(9), Sept. 28, 1976, 90 Stat. 1322.)

REFERENCES IN TEXT

The effective date of this Act, referred to in text, probably means the effective date of Pub. L. 94-422, which was approved on Sept. 28, 1976.

§ 470p. Rights, benefits, and privileges of transferred employees

Any employee in the competitive service of the United States transferred to the Council under the provisions of this section shall retain all the rights, benefits, and privileges pertaining thereto held prior to such transfer.

(Pub. L. 89-665, title II, § 208, as added Pub. L. 94-422, title II, § 201(9), Sept. 28, 1976, 90 Stat. 1322.)

§ 470q. Operations of Council; exemption

The Council is exempt from the provisions of the Federal Advisory Committee Act (86 Stat. 770), and the provisions of subchapter II of chapter 5, and chapter 7, of title 5 shall govern the operations of the Council.

(Pub. L. 89-665, title II, § 209, as added Pub. L. 94-422, title II, § 201(9), Sept. 28, 1976, 90 Stat. 1322.)

REFERENCES IN TEXT

The Federal Advisory Committee Act (86 Stat. 770), referred to in text, is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is classified to the Appendix of Title 5, Government Organization and Employees.

CODIFICATION

"Subchapter II of chapter 5, and chapter 7 of title 5" was substituted in text for "the Administrative Procedure Act (80 Stat. 381)" on authority of Pub. L. 89-554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

§ 470r. Transmittal of legislative recommendations, or testimony, or comments, to any officer or agency of the United States prior to submission thereof to Congress; prohibition

No officer or agency of the United States shall have any authority to require the Council to submit its legislative recommendations, or testimony, or comments on legislation to any officer or agency of the United States for ap-

proval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress. In instances in which the Council voluntarily seeks to obtain the comments or review of any officer or agency of the United States, the Council shall include a description of such actions in its legislative recommendations, testimony, or comments on legislation which it transmits to the Congress.

(Pub. L. 89-665, title II, § 210, as added Pub. L. 94-422, title II, § 201(9), Sept. 28, 1976, 90 Stat. 1322, and amended Pub. L. 96-515, title III, § 301(k), Dec. 12, 1980, 94 Stat. 2999.)

AMENDMENTS

1980—Pub. L. 96-515 struck out provision requiring the Council, whenever it transmits any legislative recommendations, or testimony, or comments on legislation to the President or Office of Management and Budget, to concurrently transmit copies thereof to the House Committee on Interior and Insular Affairs and the Senate Committee on Interior and Insular Affairs.

§ 470s. Rules and regulations; participation by local governments

The Council is authorized to promulgate such rules and regulations as it deems necessary to govern the implementation of section 470f of this title. The Council shall, by regulation, establish such procedures as may be necessary to provide for participation by local governments in proceedings and other actions taken by the Council with respect to undertakings referred to in section 470f of this title which affect such local governments.

(Pub. L. 89-665, title II, § 211, as added Pub. L. 94-422, title II, § 201(9), Sept. 28, 1976, 90 Stat. 1322, and amended Pub. L. 96-515, title III, § 301(*l*), Dec. 12, 1980, 94 Stat. 2999.)

AMENDMENTS

1980—Pub. L. 96-515 inserted provision authorizing the Council to establish procedures as necessary to provide for participation by local governments in proceedings and other actions taken by the Council with respect to undertakings referred to in section 470f of this title which affect such local governments.

§ 470t. Budget; authorization of appropriations

(a) Time of submission; related department; authorized appropriations

The Council shall submit its budget annually as a related agency of the Department of the Interior. To carry out the provisions of sections 470i to 470v of this title, there are authorized to be appropriated not more than $1,500,000 in fiscal year 1977, $1,750,000 in fiscal year 1978, and $2,000,000 in fiscal year 1979. There are authorized to be appropriated not to exceed $2,250,000 in fiscal year 1980, $2,500,000 in fiscal year 1981, $2,500,000 in fiscal year 1982, and $2,500,000 in fiscal year 1983.

(b) Transmittal of copies to Congressional committees

Whenever the Council submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit copies of that estimate or request to the House and Senate Appropriations Committees and the House Committee on Interior and Insular Affairs and the Senate Committee on Energy and Natural Resources.

(Pub. L. 89-665, title II, § 212, as added Pub. L. 94-422, title II, § 201(9), Sept. 28, 1976, 90 Stat. 1323, and amended Pub. L. 95-625, title VI, § 614, Nov. 10, 1978, 92 Stat. 3521; Pub. L. 96-205, title VI, § 608(a)(3), Mar. 12, 1980, 94 Stat. 92; Pub. L. 96-244, § 2, May 19, 1980, 94 Stat. 346; Pub. L. 96-515, title III, § 302(b), Dec. 12, 1980, 94 Stat. 3000.)

AMENDMENTS

1980—Subsec. (a). Pub. L. 96-244 inserted "$2,500,000 in the fiscal year 1981, $2,500,000 in fiscal year 1982, and $2,500,000 in fiscal year 1983" following "in fiscal year 1980".

Subsec. (b). Pub. L. 96-515 substituted "Senate Committee on Energy and Natural Resources" for "Senate Committee on Interior and Insular Affairs", which amendment is identical to the amendment by section 608(a)(3) of Pub. L. 96-205, thereby requiring no change in text.

Pub. L. 96-205 substituted "Energy and Natural Resources" for "Interior and Insular Affairs".

1978—Subsec. (a). Pub. L. 95-625 authorized appropriation of $2,250,000 in fiscal year 1980.

LIMITATIONS ON AUTHORIZATION OF APPROPRIATIONS FOR PROGRAMS OF THE ADVISORY COUNCIL ON HISTORIC PRESERVATION FOR FISCAL YEARS 1981, 1982, 1983 AND 1984

Pub. L. 97-35, title XIV, § 1402, Aug. 13, 1981, 95 Stat. 749, provided that: "Notwithstanding any other provision of law, there shall not be appropriated for programs of the Advisory Council on Historic Preservation in excess of $1,590,000 for the fiscal year ending September 30, 1981; in excess of $1,865,000 for the fiscal year ending on September 30, 1982; in excess of $1,920,000 for the fiscal year ending on September 30, 1983; and in excess of $2,000,000 for the fiscal year ending on September 30, 1984."

§ 470u. Report by Secretary to Council

To assist the Council in discharging its responsibilities under this subchapter, the Secretary at the request of the Chairman, shall provide a report to the Council detailing the significance of any historic property, describing the effects of any proposed undertaking on the affected property, and recommending measures to avoid, minimize, or mitigate adverse effects.

(Pub. L. 89-665, title II, § 213, as added Pub. L. 96-515, title III, § 302(a), Dec. 12, 1980, 94 Stat. 3000.)

§ 470v. Exemption for Federal programs or undertakings; regulations

The Council, with the concurrence of the Secretary, shall promulgate regulations or guidelines, as appropriate, under which Federal programs or undertakings may be exempted from any or all of the requirements of subchapter when such exemption is determined to be consistent with the purposes of subchapter, taking into consideration the magnitude of the exempted undertaking or program and the likelihood of impairment of historic properties.

(Pub. L. 89-665, title II, § 214, as added Pub. L. 96-515, title III, § 302(a), Dec. 12, 1980, 94 Stat. 3000.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 470f, 470h-2, 470k, 470t, 470w; title 40 section 611.

§ 470w. Definitions

As used in this subchapter, the term—

(1) "Agency" means agency as such term is defined in section 551 of title 5, except that in the case of any Federal program exempted under section 470v of this title, the agency administering such program shall not be treated as an agency with respect to such program.

(2) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territories of the Pacific Islands.

(3) "Local government" means a city, county, parish, township, municipality, or borough, or any other general purpose political subdivision of any State.

(4) "Indian tribe" means the governing body of any Indian tribe, band, nation, or other group which is recognized as an Indian tribe by the Secretary of the Interior and for which the United States holds land in trust or restricted status for that entity or its members. Such term also includes any Native village corporation, regional corporation, and Native Group established pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.].

(5) "Historic property" or "historic resource" means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion on the National Register; such term includes artifacts, records, and remains which are related to such a district, site, building, structure, or object.

(6) "National Register" or "Register" means the National Register of Historic Places established under section 470a of this title.

(7) "Undertaking" means any action as described in section 470f of this title.

(8) "Preservation" or "historic preservation" includes identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance and reconstruction, or any combination of the foregoing activities.

(9) "Cultural park" means a definable urban area which is distinguished by historic resources and land related to such resources and which constitutes an interpretive, educational, and recreational resource for the public at large.

(10) "Historic conservation district" means an urban area of one or more neighborhoods and which contains (A) historic properties, (B) buildings having similar or related architectural characteristics, (C) cultural cohesiveness, or (D) any combination of the foregoing.

(11) "Secretary" means the Secretary of the Interior except where otherwise specified.

(12) "State historic preservation review board" means a board, council, commission, or other similar collegial body established as provided in section 470a(b)(1)(B) of this title—

(A) the members of which are appointed by the State Historic Preservation Officer (unless otherwise provided for by State law),

(B) a majority of the members of which are professionals qualified in the following and related disciplines: history, prehistoric and historic archaeology, architectural history, and architecture, and

(C) which has the authority to—

(i) review National Register nominations and appeals from nominations;

(ii) review appropriate documentation submitted in conjunction with the Historic Preservation Fund;

(iii) provide general advice and guidance to the State Historic Preservation Officer,[1] and

(iv) perform such other duties as may be appropriate.

(13) "Historic preservation review commission" means a board, council, commission, or other similar collegial body which is established by State or local legislation as provided in section 470a(c)(1)(B) of this title, and the members of which are appointed, unless otherwise provided by State or local legislation, by the chief elected official of the jurisdiction concerned from among—

(A) professionals in the disciplines of architecture, history, architectural history, planning, archaeology, or related disciplines, to the extent such professionals are available in the community concerned, and

(B) such other persons as have demonstrated special interest, experience, or knowledge in history, architecture, or related disciplines and as will provide for an adequate and qualified commission.

(Pub. L. 89-665, title III, § 301, as added Pub. L. 96-515, title V, § 501, Dec. 12, 1980, 94 Stat. 3001.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in par. (4), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act of the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

§ 470w-1. Authorization for expenditure of appropriated funds

Where appropriate, each Federal agency is authorized to expend funds appropriated for its authorized programs for the purposes of activities carried out pursuant to this subchapter, except to the extent appropriations legislation expressly provides otherwise.

(Pub. L. 89-665, title III, § 302, as added Pub. L. 96-515, title V, § 501, Dec. 12, 1980, 94 Stat. 3002.)

[1] So in original. The comma probably should be a semicolon.

§ 470w-2. Donations and bequests of money, personal property and less than fee interests in historic property

(a) The Secretary is authorized to accept donations and bequests of money and personal property for the purposes of this subchapter and shall hold, use, expend, and administer the same for such purposes.

(b) The Secretary is authorized to accept gifts or donations of less than fee interests in any historic property where the acceptance of such interests will facilitate the conservation or preservation of such properties. Nothing in this section or in any provision of this subchapter shall be construed to affect or impair any other authority of the Secretary under other provision of law to accept or acquire any property for conservation or preservation or for any other purpose.

(Pub. L. 89-665, title III, § 303, as added Pub. L. 96-515, title V, § 501, Dec. 12, 1980, 94 Stat. 3002.)

§ 470w-3. Information relating to location or character of historic resources, disclosure to public

The head of any Federal agency, after consultation with the Secretary, shall withhold from disclosure to the public, information relating to the location or character of historic resources whenever the head of the agency or the Secretary determines that the disclosure of such information may create a substantial risk of harm, theft, or destruction to such resources or to the area or place where such resources are located.

(Pub. L. 89-665, title III, § 304, as added Pub. L. 96-515, title V, § 501, Dec. 12, 1980, 94 Stat. 3002.)

§ 470w-4. Attorneys' fees and costs to prevailing parties in civil actions

In any civil action brought in any United States district court by any interested person to enforce the provisions of this subchapter, if such person substantially prevails in such action, the court may award attorneys' fees, expert witness fees, and other costs of participating in such action, as the court deems reasonable.

(Pub. L. 89-665, title III, § 305, as added Pub. L. 96-515, title V, § 501, Dec. 12, 1980, 94 Stat. 3002.)

§ 470w-5. National Museum for the Building Arts

(a) Cooperative agreement between Secretary, Administrator of General Services Administration and Committee for National Museum of the Building Arts; purposes

In order to provide a national center to commemorate and encourage the building arts and to preserve and maintain a nationally significant building which exemplifies the great achievements of the building arts in the United States, the Secretary and the Administrator of the General Services Administration are authorized and directed to enter into a cooperative agreement with the Committee for a National Museum of the Building Arts, Incorporated, a nonprofit corporation organized and existing under the laws of the District of Columbia, or its successor, for the operation of a National Museum for the Building Arts in the Federal Building located in the block bounded by Fourth Street, Fifth Street, F Street, and G Street, Northwest in Washington, District of Columbia. Such museum shall—

(1) collect and disseminate information concerning the building arts, including the establishment of a national reference center for current and historic documents, publications, and research relating to the building arts;

(2) foster educational programs relating to the history, practice and contribution to society of the building arts, including promotion of imaginative educational approaches to enhance understanding and appreciation of all facets of the building arts;

(3) publicly display temporary and permanent exhibits illustrating, interpreting and demonstrating the building arts;

(4) sponsor or conduct research and study into the history of the building arts and their role in shaping our civilization; and

(5) encourage contributions to the building arts.

(b) Provisions of cooperative agreement

The cooperative agreement referred to in subsection (a) of this section shall include provisions which—

(1) make the site available to the Committee referred to in subsection (a) of this section without charge;

(2) provide, subject to available appropriations, such maintenance, security, information, janitorial and other services as may be necessary to assure the preservation and operation of the site; and

(3) prescribe reasonable terms and conditions by which the Committee can fulfill its responsibilities under this subchapter.

(c) Matching grants-in-aid to Committee; limitation on amounts

The Secretary is authorized and directed to provide matching grants-in-aid to the Committee referred to in subsection (a) of this section for its programs related to historic preservation. The Committee shall match such grants-in-aid in a manner and with such funds and services as shall be satisfactory to the Secretary, except that no more than $500,000 may be provided to the Committee in any one fiscal year.

(d) Renovation of site

The renovation of the site shall be carried out by the Administrator with the advice of the Secretary. Such renovation shall, as far as practicable—

(1) be commenced immediately,

(2) preserve, enhance, and restore the distinctive and historically authentic architectural character of the site consistent with the needs of a national museum of the building arts and other compatible use, and

(3) retain the availability of the central court of the building, or portions thereof, for appropriate public activities.

(e) Annual Committee report to Secretary and Administrator

The Committee shall submit an annual report to the Secretary and the Administrator concerning its activities under this section and shall provide the Secretary and the Administrator with such other information as the Secretary may, from time to time, deem necessary or advisable.

(f) "Building arts" defined

For purposes of this section, the term "building arts" includes, but shall not be limited to, all practical and scholarly aspects of prehistoric, historic, and contemporary architecture, archaeology, construction, building technology and skills, landscape architecture, preservation and conservation, building and construction, engineering, urban and community design and renewal, city and regional planning, and related professions, skills, trades, and crafts.

(Pub. L. 89-665, title III, § 306, as added Pub. L. 96-515, title V, § 501, Dec. 12, 1980, 94 Stat. 3002.)

§ 470w–6. Effective date of regulations

(a) Copy to Congress prior to publication in Federal Register; effective date of final regulations

At least thirty days prior to publishing in the Federal Register any proposed regulation required by this subchapter, the Secretary shall transmit a copy of the regulation to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate. The Secretary also shall transmit to such committees a copy of any final regulation prior to its publication in the Federal Register. Except as provided in subsection (b) of this section, no final regulation of the Secretary shall become effective prior to the expiration of thirty calendar days after it is published in the Federal Register during which either or both Houses of Congress are in session.

(b) Effective date of final regulation in case of emergency

In the case of an emergency, a final regulation of the Secretary may become effective without regard to the last sentence of subsection (a) of this section if the Secretary notified in writing the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate setting forth the reasons why it is necessary to make the regulation effective prior to the expiration of the thirty-day period.

(c) Disapproval of regulation by resolution of Congress

Except as provided in subsection (b) of this section, the regulation shall not become effective if, within ninety calendar days of continuous session of Congress after the date of promulgation, both Houses of Congress adopt a concurrent resolution, the matter after the resolving clause of which is as follows: "That Congress disapproves the regulation promulgated by the Secretary dealing with the matter of , which regulation was transmitted to Congress on ," the blank spaces therein being appropriately filled.

(d) Failure of Congress to adopt resolution of disapproval of regulation

If at the end of sixty calendar days of continuous session of Congress after the date of promulgation of a regulation, no committee of either House of Congress has reported or been discharged from further consideration of a concurrent resolution disapproving the regulation, and neither House has adopted such a resolution, the regulation may go into effect immediately. If, within such sixty calendar days, such a committee has reported or been discharged from further consideration of such a resolution, the regulation may go into effect not sooner than ninety calendar days of continuous session of Congress after its promulgation unless disapproved as provided for.

(e) Sessions of Congress

For the purposes of this section—

(1) continuity of session is broken only by an adjournment sine die; and

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of sixty and ninety calendar days of continuous session of Congress.

(f) Congressional inaction or rejection of resolution of disapproval not deemed approval of regulation

Congressional inaction on or rejection of a resolution of disapproval shall not be deemed an expression of approval of such regulation.

(Pub. L. 89-665, title III, § 307, as added Pub. L. 96-515, title V, § 501, Dec. 12, 1980, 94 Stat. 3004.)

PART 800—PROTECTION OF HISTORIC AND CULTURAL PROPERTIES

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800.1 Purpose and authorities.
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OTHER PROVISIONS

800.12 Investigation of threats to National Register and eligible properties.
800.13 Reports to the Council.
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AUTHORITY: Pub. L. 89-665, 80 Stat. 915 (16 U.S.C. 470), as amended; 84 Stat. 204 (1970); 87 Stat. 139 (1973); 90 Stat. 1320 (1976); 92 Stat. 3467 (1978); E.O. 11593, 3 CFR 1971 Comp., p. 154; President's Memorandum on Environmental Quality and Water Resources Management, July 12, 1978.

SOURCE: 44 FR 6072, Jan. 30, 1979, unless otherwise noted.

§ 800.1 Purpose and authorities.

(a) The National Historic Preservation Act of 1966, as amended, established the Advisory Council on Historic Preservation as an independent agency of the United States to advise the President and the Congress on historic preservation matters, recommend measures to coordinate Federal historic preservation activities, and comment on Federal actions affecting properties included in or eligible for inclusion in the National Register of Historic Places. Its members are the Secretary of the Interior, the Secretary of Housing and Urban Development, the Secretary of Commerce, the Administrator of General Services, the Secretary of the Treasury, the Attorney General, the Secretary of Agriculture, the Secretary of Transportation, the Secretary of State, the Secretary of Defense, the Secretary of Health, Education, and Welfare, the Chairman of the Council on Environmental Quality, the Chairman of the Federal Council on the Arts and Humanities, the Architect of the Capitol, the Secretary of the Smithsonian Institution, the Chairman of the National Trust for Historic Preservation, the President of the National Conference of State Historic Preservation Officers, and 12 citizen members from outside the Federal Government appointed for five-year terms by the President on the basis of their interest and experience in the matters to be considered by the Council.

(b) The Council protects properties of historical, architectural, archeological, and cultural significance at the national, State, and local level by reviewing and commenting on Federal actions affecting National Register and eligible properties in accordance with the following authorities:

(1) Section 106 of the National Historic Preservation Act. Section 106 requires that Federal agencies with direct or indirect jurisdiction over a Federal, federally assisted or federally licensed undertaking afford the Council a reasonable opportunity for comment on such undertakings that affect properties included in or eligible for inclusion in the National Register of Historic Places prior to the agency's approval of any such undertaking.

(2) Section 1(3) of Executive Order 11593, May 13, 1971, "Protection and Enhancement of the Cultural Environment." Section 1(3) requires that Federal agencies, in consultation with the Council, institute procedures to assure that their plans and programs contribute to the preservation and enhancement of non-federally owned historic and cultural properties.

(3) Section 2(b) of Executive Order 11593, May 13, 1971, "Protection and Enhancement of the Cultural Environment." Federal agencies are required by Section 2(a) of the Executive Order to locate, inventory, and nominate properties under their jurisdiction or control to the National Register. Until such processes are complete, Federal agencies must provide the Council an opportunity to comment on proposals for the transfer, sale, demolition, or substantial alteration of federally owned properties eligible for inclusion in the National Register.

(4) The President's Memorandum on Environmental Quality and Water Resources Management. The Memorandum directs the Council to issue final regulations under the National Historic Preservation Act by March 1, 1979, and further directs Federal agencies with water resource responsibilities and programs to publish procedures implementing the Act not later than three months after promulgation of final regulations by the Council. Federal agencies' procedures are to be reviewed and, if they are consistent with the Council's regulations, approved by the Council within 60 days and published in final form.

§ 800.2 Definitions.

As used in these regulations:

(a) "National Historic Preservation Act" means Pub. L. 89-665, approved October 15, 1966, an "Act to establish a program for the preservation of additional historic properties throughout the Nation and for other purposes" (80 Stat. 915, 16 U.S.C. 470, as amended, 84 Stat. 204 (1970), 87 Stat. 139 (1973), 90 Stat. 1320 (1976), 92 Stat. 3467 (1978)), hereinafter referred to as "the Act."

(b) "Executive Order" means Executive Order 11593, May 13, 1971, "Protection and Enhancement of the Cultural Environment" (36 FR 8921, 16 U.S.C. 470).

(c) "Undertaking" means any Federal, federally assisted or federally licensed action, activity, or program or the approval, sanction, assistance, or support of any non-Federal action, activity, or program. Undertakings include new and continuing projects and program activities (or elements of such activities not previously considered under Section 106 or Executive Order 11593) that are: (1) Directly undertaken by Federal agencies; (2) supported in whole or in part through Federal contracts, grants, subsidies, loans, loan guarantees, or other forms of direct and indirect funding assistance; (3) carried out pursuant to a Federal lease, permit, license, certificate, approval, or other form of entitlement or permission; or, (4) proposed by a Federal agency for Congressional authorization or appropriation. Site-specific undertakings affect areas and properties that are capable of being identified at the time of approval by the Federal agency. Non-site-specific undertakings have effects that can be anticipated on National Register and eligible properties but cannot be identified in terms of specific geographical areas or properties at the time of Federal approval. Non-site-specific undertakings include Federal approval of State plans pursuant to Federal legislation, development of comprehensive or area-wide plans, agency recommendations for legislation and the establishment or modification of regulations and planning guidelines.

(d) "National Register" means the National Register of Historic Places. It is a register of districts, sites, buildings, structures, and objects of national, State, or local significance in American history, architecture, archeology, and culture that is expanded and maintained by the Secretary of the Interior under authority of section 2(b) of the Historic Sites Act of 1935 (49 Stat. 666, 16 U.S.C. 461) and Section 101(a)(1) of the National Historic Preservation Act implemented through 36 CFR Part 60. The National Register is published in its entirety in the FEDERAL REGISTER each year in February. Addenda are usually published on the first Tuesday of each month.

(e) "National Register property" means a district, site, building, structure, or object included in the National Register.

(f) "Eligible property" means any district, site, building, structure, or object that meets the National Register Criteria.

(g) "National Register Criteria" means the criteria established by the Secretary of the Interior to evaluate properties to determine whether they are eligible for inclusion in the National Register. (See 36 CFR 60.6.)

(h) "Decision" means the exercise of or the opportunity to exercise discre-

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tionary authority by a Federal agency at any stage of an undertaking where alterations might be made in the undertaking to modify its impact upon National Register and eligible properties.

(i) "Agency Official" means the head of the Federal agency having responsibility for the undertaking or a designee authorized to act for the Agency Official.

(j) "Council" means the Advisory Council on Historic Preservation as established by Title II of the Act.

(k) "Chairman" means the Chairman of the Advisory Council on Historic Preservation or a member designated to act for the Chairman.

(l) "Executive Director" means the Executive Director of the Advisory Council on Historic Preservation as established by Section 205 of the Act, or a designee authorized to act for the Executive Director.

(m) "State Historic Preservation Officer" means the official, who is responsible for administering the Act within the State or jurisdiction, or a designated representative authorized to act for the State Historic Preservation Officer. These officers are appointed pursuant to 36 CFR 61.2 by the Governors of the 50 States, Guam, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Trust Territory of the Pacific Islands, the Commonwealth of the Mariana Islands, and the Mayor of the District of Columbia.

(n) "Secretary" means the Secretary of the Interior or a designee authorized to carry out the historic preservation responsibilities of the Secretary under the Act, Executive Order 11593, and related authorities.

(o) "Area of the undertaking's potential environmental impact" means that geographical area within which direct and indirect effects generated by the undertaking could reasonably be expected to occur and thus cause a change in the historical, architectural, archeological, or cultural qualities possessed by a National Register or eligible property. The boundaries of such area should be determined by the Agency Official in consultation with the State Historic Preservation Officer as early as possible in the planning of the undertaking.

(p) "Consulting parties" means the Agency Official, the State Historic Preservation Officer, and the Executive Director.

§ 800.3 Criteria of effect and adverse effect.

The following criteria shall be used to determine whether an undertaking has an effect or an adverse effect in accordance with these regulations.

(a) *Criteria of Effect.* The effect of a Federal, federally assisted or federally licensed undertaking on a National Register or eligible property is evaluated in the context of the historical, architectural, archeological, or cultural significance possessed by the property. An undertaking shall be considered to have an effect whenever any condition of the undertaking causes or may cause any change, beneficial or adverse, in the quality of the historical, architectural, archeological, or cultural characteristics that qualify the property to meet the criteria of the National Register. An effect occurs when an undertaking changes the integrity of location, design, setting, materials, workmanship, feeling, or association of the property that contributes to its significance in accordance with the National Register criteria. An effect may be direct or indirect. Direct effects are caused by the undertaking and occur at the same time and place. Indirect effects include those caused by the undertaking that are later in time or farther removed in distance, but are still reasonably foreseeable. Such effects may include changes in the pattern of land use, population density or growth rate that may affect on properties of historical, architectural, archeological, or cultural significance.

(b) *Criteria of Adverse Effect.* Adverse effects on National Register or eligible properties may occur under conditions which include but are not limited to:

(1) Destruction or alteration of all or part of a property;

(2) Isolation from or alteration of the property's surrounding environment;

(3) Introduction of visual, audible, or atmospheric elements that are out of character with the property or alter its setting;

(4) Neglect of a property resulting in its deterioration or destruction.

(5) Transfer or sale of a property without adequate conditions or restrictions regarding preservation, maintenance, or use.

Review of Individual Undertakings

§ 800.4 Federal Agency responsibilities.

As early as possible before an agency makes a final decision concerning an undertaking and, in any event prior to taking any action that would foreclose alternatives or the Council's ability to comment, the Agency Official shall take the following steps to comply with the requirements of Section 106 of the National Historic Preservation Act and Section 2(b) of Executive Order 11593. It is the primary responsibility of each Agency Official requesting Council comments to conduct the appropriate studies and to provide the information necessary for an adequate review of the effect a proposed undertaking may have on a National Register or eligible property, as well as the information necessary for adequate consideration of modifications or alterations to the proposed undertaking that could avoid, mitigate, or minimize any adverse effects. It is the responsibility of each Agency Official requesting consultation with a State Historic Preservation Officer under this section to provide the information that is necessary to make an informed and reasonable evaluation of whether a property meets National Register criteria and to determine the effect of a proposed undertaking on a National Register or eligible property. Although a Federal agency may require non-Federal parties to undertake certain steps required by these regulations as a prerequisite to Federal action and may authorize non-Federal participation under this section and in the consultation process under § 800.6 pursuant to approved counterpart regulations, the ultimate responsibility for compliance with these regulations remains with the Federal agency and cannot be delegated by it.

(a) *Identification of National Register and Eligible Properties.* It is the responsibility of each Federal agency to identify or cause to be identified any National Register or eligible property that is located within the area of the undertaking's potential environmental impact and that may be affected by the undertaking.

(1) The Agency Official shall consult the State Historic Preservation Officer, the published lists of National Register and eligible properties, public records, and other individuals or organizations with historical and cultural expertise, as appropriate, to determine what historic and cultural properties are known to be within the area of the undertaking's potential environmental impact. The State Historic Preservation Officer should provide the Agency Official with any information available on known historic and cultural properties identified in the area (whether on the National Register or not), information on any previous surveys performed and an evaluation of their quality, a recommendation as to the need for a survey of historic and cultural properties, and recommendations as to the type of survey and/or survey methods should a survey be recommended, and recommendations on boundaries of such surveys.

(2) The Agency Official shall, after due consideration of the information obtained pursuant to § 800.4(a)(1), determine what further actions are necessary to discharge the agency's affirmative responsibilities to locate and identify eligible properties that are within the area of the undertaking's potential environmental impact and that may be affected by the undertaking. Such actions may include a professional cultural resource survey of the environmental impact area, or parts of the area, if the area has not previously been adequately surveyed. The recommendations of the State Historic Preservation Officer should be followed in this matter.

(3) The Agency Official, in consultation with the State Historic Preservation Officer, shall apply the National Register criteria to all properties that may possess any historical, architectural, archeological, or cultural value located within the area of the under-

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taking's potential environmental impact. If either the Agency Official or the State Historic Preservation Officer finds that a property meets the National Register Criteria or a question exists as to whether a property meets the Criteria, the Agency Official shall request a determination of eligibility from the Secretary of the Interior in accordance with 36 CFR Part 63. The opinion of the Secretary respecting the eligibility of a property shall be conclusive for the purposes of these regulations. If the Agency Official and the State Historic Preservation Officer agree that no identified property meets the Criteria, the Agency Official shall document this finding and, unless the Secretary has otherwise made a determination of eligibility under 36 CFR Part 63, may proceed with the undertaking.

(4) The Agency Official shall complete the preceding steps prior to requesting the Council's comments pursuant to § 800.4(b)-(d). The Agency Official may, however, initiate a request for the Council's comments simultaneously with a request for a determination of eligibility from the Secretary when the Agency Official and the State Historic Preservation Officer agree that a property meets the National Register Criteria. Before the Council completes action pursuant to § 800.6, the Secretary must find the property eligible for inclusion in the National Register.

(b) *Determination of Effect.* For each National Register or eligible property that is located within the area of the undertaking's potential environmental impact, the Agency Official, in consultation with the State Historic Preservation Officer, shall apply the Criteria of Effect, (§ 800.3(a)), to determine whether the undertaking will have an effect upon the historical, architectural, archeological, or cultural characteristics of the property that qualified it to meet National Register Criteria.

(1) *No Effect.* If the Agency Official, in consultation with the State Historic Preservation Officer, finds that the undertaking will not affect these characteristics, the undertaking may proceed. The Agency Official shall document each Determination of No Effect, which shall be available for public inspection. If the State Historic Preservation Officer objects or other timely objection is made to the Executive Director to an Agency Official's Determination of No Effect, the Executive Director may review the Determination and advise the Agency Official, the State Historic Preservation Officer and any objecting party of the findings within 15 days.

(2) *Effect determined.* If the Agency Official or the Executive Director finds that the undertaking will have an effect upon these characteristics, the Agency Official, in consultation with the State Historic Preservation Officer, shall apply the Criteria of Adverse Effect, set forth in § 800.3(b), to determine whether the effect of the undertaking may be adverse.

(c) *Determinations of no adverse effect.* If the Agency Official, in consultation with the State Historic Preservation Officer, finds the effect on the historical, architectural, archeological, or cultural characteristics of the property not to be adverse, the Agency Official shall forward adequate documentation (See § 800.13(a)) of the Determination, including written evidence of the views of the State Historic Preservation Officer, to the Executive Director for review in accordance with § 800.6. If the State Historic Preservation Officer fails to respond to an Agency Official's request as provided in § 800.5, the Agency Official shall include evidence of having contacted the State Historic Preservation Officer.

(d) *Adverse effect determination.* If the Agency Official finds the effect on the historical, architectural, archeological, or cultural characteristics of the property to be adverse, or if the Executive Director does not accept an Agency Official's Determination of No Adverse Effect pursuant to review under § 800.6, the Agency Official shall:

(1) Prepare and submit a Preliminary Case Report requesting the comments of the Council (See § 800.13(b)),

(2) Notify the State Historic Preservation Officer of this request, and

(3) Proceed with the consultation process set forth in § 800.6.

(e) *Suspense of action.* Until the Council issues its comments under these regulations, good faith consultation shall preclude a Federal agency from taking or sanctioning any action or making any irreversible or irretrievable commitment that could result in an adverse effect on a National Register or eligible property or that would foreclose the consideration of modifications or alternatives to the proposed undertaking that could avoid, mitigate, or minimize such adverse effects.

EDITORIAL NOTE: At 47 FR 24306, June 4, 1982 § 800.4(a)(4) was suspended until further notice, effective July 6, 1982.

§ 800.5 State Historic Preservation Officer responsibilities.

(a) The State Historic Preservation Officer should participate in the review process established by these regulations whenever it concerns an undertaking located within the State Historic Preservation Officer's jurisdiction.

(b) Unless a longer time is agreed to by the Agency Official, the failure of a State Historic Preservation Officer to respond to an Agency Official's request for consultation under § 800.4 within 30 days after receipt shall not prohibit the Agency Official from proceeding with the review process under these regulations.

(c) The State Historic Preservation Officer, with the Agency Official and the Executive Director, should participate in any consultation under § 800.6(b) and sign any Memorandum of Agreement developed under § 800.6(c) of these regulations. Failure of a State Historic Preservation Officer to participate in a consultation under § 800.6(b) or to sign a Memorandum of Agreement as provided in § 800.6(c)(1) within 30 days of receipt without notifying the Executive Director and the Agency Official that the State Historic Preservation Officer disagrees with the terms of the Agreement shall not prohibit the Executive Director and the Agency Official from concluding the Agreement and having it ratified by the Chairman in accordance with § 800.6(c)(2).

§ 800.6 Council comments.

The following subsections specify how the Council will respond to Federal agency requests for the Council's comments required to satisfy an agency's responsibilities under Section 106 of the Act and Section 2(b) of the Executive Order.

(a) *Response to determinations of no adverse effect.* (1) Upon receipt of a Determination of No Adverse Effect from an Agency Official, the Executive Director will review the Determination and supporting documentation. Normally, the Executive Director will concur without delay. If the documentation is not adequate, the Executive Director will so inform the Agency Official within 15 days. Unless the Executive Director objects to the Determination within 30 days after receipt of an adequately documented Determination, the Agency Official will be considered to have satisfied the agency's responsibilities under Section 106 of the Act, Section 2(b) of the Executive Order, and these regulations, and may proceed with the undertaking.

(2) If the Executive Director objects to a Determination of No Adverse Effect, the Executive Director shall specify the basis for the objection and may specify conditions which will eliminate the objection. As appropriate, the Executive Director may consult the Agency Official, the State Historic Preservation Officer, and other interested parties in specifying conditions. If the Agency Official accepts the conditions in writing, the conditions will be incorporated into the agency's Determination and the Executive Director's objection will be withdrawn. The Agency Official then will be considered to have satisfied the agency's responsibilities under Section 106 of the Act, Section 2(b) of the Executive Order, and these regulations, and may proceed with the undertaking.

(3) If the Agency Official does not accept the Executive Director's conditions or if the Executive Director objects to a Determination of No Adverse Effect without specifying conditions that would remove the objection, the Executive Director shall initiate

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the consultation process pursuant to § 800.6(b).

(b) *Consultation Process.* The Agency Official, the State Historic Preservation Officer, and the Executive Director shall be the consulting parties to consider feasible and prudent alternatives to the undertaking that could avoid, mitigate, or minimize adverse effects on a National Register or eligible property. When an undertaking involves more than one Federal agency, these agencies may, upon notification to the Executive Director, coordinate their consultation responsibilities through a single lead agency. Grantees, permittees, licensees, or other parties in interest, and representatives of national, State, or local units of government and public and private organizations, may be invited by the consulting parties to participate in the consultation process.

(1) *Preliminary Case Report.* The Agency Official shall provide copies of the report to the consulting parties at the initiation of the consultation and make it readily available for public inspection.

(2) *On-site inspection.* At the request of any of the consulting parties, the Agency Official shall conduct an on-site inspection.

(3) *Public Information Meeting.* At the request of any of the consulting parties, the Executive Director shall conduct a meeting open to the public, where representatives of national, State, or local units of government, representatives of public or private organizations, and interested citizens may receive information and express their views on the undertaking, its effects on the National Register or eligible property, and alternate courses of action that could avoid, mitigate, or minimize any adverse effects on such properties. The Agency Official shall provide adequate facilities for the meeting near the site of the undertaking and shall afford appropriate notice to the public, generally at least 15 days in advance of the meeting.

(4) *Consideration of Alternatives.* Upon review of the proposed undertaking and after any on-site inspection or public information meeting, the consulting parties shall determine whether there are feasible and prudent alternatives to avoid the adverse effects on National Register or eligible property. If the consulting parties cannot agree on an alternative to avoid, they shall consult further to determine if there are alternatives that could satisfactorily mitigate the adverse effects.

(5) *Avoidance or Satisfactory Mitigation of Adverse Effect.* If the consulting parties agree upon a feasible and prudent alternative to avoid or satisfactorily mitigate the adverse effects of the undertaking on the National Register or eligible property, they shall execute a Memorandum of Agreement in accordance with § 800.6(c) specifying how the undertaking will proceed to avoid or mitigate the adverse effect.

(6) *Acceptance of Adverse Effect.* If the consulting parties determine that there are no feasible and prudent alternatives that could avoid or satisfactorily mitigate the adverse effects and agree that it is in the public interest to proceed with the proposed undertaking, they shall execute a Memorandum of Agreement in accordance with § 800.6(c) acknowledging this determination and specifying any recording, salvage, or other measures to minimize the adverse effects that shall be taken before the undertaking proceeds.

(7) *Failure to Agree.* Upon the failure of the consulting parties to agree upon the terms for a Memorandum of Agreement, or upon notice of such failure by any of the consulting parties to the Executive Director, the Executive Director shall notify the Chairman within fifteen days and shall recommend whether or not the matter should be scheduled for consideration at a Council meeting. The Agency Official and the State Historic Preservation Officer shall be notified in writing of the Executive Director's recommendation.

(c) *Memorandum of Agreement*—(1) *Preparation of Memorandum of Agreement.* It shall be the responsibility of the Executive Director to prepare each Memorandum of Agreement required under these regulations. Unless otherwise requested by the Executive Director, the Agency Official shall prepare a proposal for inclusion in the Agreement that details the actions agreed upon by the consulting parties to be taken to avoid, satisfactorily mitigate, or accept the adverse effects on the property. The State Historic Preservation Officer's written concurrence shall be included in this proposal by the Agency Official. If the Executive Director determines that the proposal represents the agreement of the consulting parties, he shall within 10 days forward it as a Memorandum of Agreement to the Chairman for ratification pursuant to § 800.6(c)(2). If the Executive Director determines that the proposal does not adequately represent the agreement reached by the consulting parties, it may be returned to the Agency Official, or a Memorandum of Agreement revising the proposal may be submitted to the Agency Official and the State Historic Preservation Officer. As appropriate other parties in interest may be invited by the consulting parties to indicate their concurrence with the proposal or to be a signatory to the Agreement.

(2) *Review of Memorandum of Agreement.* Upon receipt of an executed Memorandum of Agreement, the Chairman shall institute a 30-day review period. Unless the Chairman notifies the Agency Official that the matter has been placed on the agenda for consideration at a Council meeting, the Agreement shall become final when ratified by the Chairman or upon the expiration of the 30-day review period with no action taken. Copies will be provided to signatories and notice of executed Memoranda of Agreement shall be published in the FEDERAL REGISTER. The Memorandum of Agreement should be included in the final environmental impact statement prepared pursuant to the National Environmental Policy Act.

(3) *Effect of Memorandum of Agreement.* Agreements duly executed in accordance with these regulations shall constitute the comments of the Council and shall evidence satisfaction of the Federal agency's responsibilities for the proposed undertaking under Section 106 of the Act, Section 2(b) of the Executive Order, and these regulations. Failure to carry out the terms of a Memorandum of Agreement requires that the Federal agency again request the Council's comments in accordance with these regulations. In such instances, until the Council issues its comments under these regulations the Agency Official shall not take or sanction any action or make any irreversible or irretrievable commitment that could result in an adverse effect with respect to National Register or eligible properties covered by the Agreement or that would foreclose the Council's consideration of modifications or alternatives to the proposed undertaking that could avoid or mitigate the adverse effect.

(4) *Amendment of a Memorandum of Agreement.* If a signatory determines that the terms of the Memorandum of Agreement cannot be met or believes a change is necessary, the signatory shall immediately request the consulting parties to consider an amendment of the Agreement. Amendments will be executed in the same manner as the original Agreement.

(5) *Report on Memorandum of Agreement.* Within 90 days after carrying out the terms of the Agreement, the Agency Official shall report to all signatories on the actions taken.

(d) *Council Meetings.* The Council does not hold formal administrative hearings to develop its comments under these regulations. Reports and statements will be presented to the Council in open session in accordance with a prearranged agenda. Regular meetings of the Council generally occur quarterly.

(1) *Response to Recommendation for Consideration at Council Meeting.* Upon receipt of a notice and recommendation from the Executive Director concerning consideration of a proposed undertaking at a Council meeting, the Chairman shall determine within 15 days whether or not the undertaking will be considered and shall notify the Executive Director, the Agency Official, and the State Historic Preservation Officer of his decision. The Agency Official shall and the State Historic Preservation Officer should provide such reports and information as may be required to assist the Chairman in this determination.

If the Chairman decides against consideration of the undertaking at a

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Council meeting, a written summary of the undertaking, any recommendations for action by the Federal agency, and the decision shall be sent to each member of the Council. The Chairman shall also notify the Agency Official and the State Historic Preservation Officer and other parties in interest of the decision. If three members of the Council object within 10 days of the Chairman's decision, the undertaking shall be scheduled for consideration at a Council meeting. Unless three members of the Council object, the chairman shall notify the Agency Official, the State Historic Preservation Officer, and other parties in interest in writing that the undertaking may proceed. Such notice shall be evidence of satisfaction of the Federal agency's responsibilities for the proposed undertaking under Section 106 of the Act, Section 2(b) of the Executive Order, and these regulations.

(2) *Decision to Consider the Undertaking.* When the Council will consider an undertaking at a meeting, the Chairman shall either designate five members as a panel to hear the matter on behalf of the full Council, or schedule the matter for consideration by the full Council.

(i) A panel shall consist of three non-Federal members, one as Chairman, and two Federal members, neither of whom shall represent the Federal agency involved in the undertaking. The panel shall meet to consider the undertaking within 30 days of the Chairman's decision unless the Agency Official agrees to a longer time.

(ii) The full Council will consider an undertaking at the next regularly scheduled meeting and no less than 60 days from the date of the Chairman's decision. In exceptional cases the Chairman may schedule the matter for consideration at a special meeting of the full Council to be held less than 60 days from the date of the decision.

(iii) Prior to any panel or full Council consideration of a matter, the Chairman will notify the Agency Official and the State Historic Preservation Officer, and other parties in interest of the date on which the undertaking will be considered. The Executive Director, the Agency Official, and the State Historic Preservation Officer shall prepare reports in accordance with § 800.13. Reports required from the Agency Official and the State Historic Preservation Officer must be received by the Executive Director at least 21 days before any meeting. Failure by the Federal agency to submit its report may result in postponement of consideration of the undertaking.

(3) *Meeting Notice.* Generally, 21 days notice of all meetings involving Council review of undertakings in accordance with these regulations shall be given by publication in the FEDERAL REGISTER. In exceptional cases, no less than 7 days notice shall be given by publication in the FEDERAL REGISTER.

(4) *Statements to the Council.* An agenda shall provide for oral statements from the Executive Director; the Agency Official; other parties in interest; the Secretary of the Interior; the State Historic Preservation Officer; representatives of national, State, or local units of government, and interested public and private organizations and individuals. Parties wishing to make oral remarks should notify the Executive Director at least two days in advance of the meeting. Parties wishing to have their statements distributed to Council members prior to the meeting should send copies of the statements to the Executive Director at least 7 days in advance.

(5) *Comments of the Council.* The written comments of the Council will be issued within 15 days after a meeting. Comments shall be made to the head of the Federal agency requesting comment or having responsibility for the undertaking. Immediately after the comments are made to the Federal agency, the comments of the Council will be forwarded to the President and Congress as a special report under authority of Section 202(b) of the Act and a notice of availability will be published in the FEDERAL REGISTER. The comments of the Council shall be available to the State Historic Preservation Officer, other parties in interest, and the public upon receipt of the comments by the head of the Federal Agency. The comments of the Council should be included in the final environmental impact statement prepared pursuant to the National Environmental Policy Act.

(6) *Review of Panel Decision.* Upon receipt of the panel's comments after a meeting, the head of the Federal agency shall take these comments into account in reaching a decision in regard to the proposed undertaking. If the agency determines not to follow the panel's comments, the Agency Official shall immediately provide written notice of this decision to the Council. The Chairman may convene a meeting of the full Council to consider the matter within 30 days of receipt of such notice. In the interim period the Agency Official shall not take or sanction any action or make any irreversible or irretrievable commitment that could result in an adverse effect on the National Register or eligible property or that would foreclose the Council's consideration of modifications or alternatives to the proposed undertaking that could avoid or mitigate the adverse effect. If the Chairman decides against consideration of the proposed undertaking, the consulting parties shall be immediately notified and the undertaking may proceed.

(7) *Agency Action in Response to Council Comments.* Upon receipt of the Council's comments after a meeting, the head of the Federal agency shall take these comments into account in reaching a final decision in regard to the proposed undertaking. When a final decision regarding the proposed undertaking is reached by the Federal agency, the Agency Official shall submit a written report to the Council describing the actions taken by the Federal Agency in response to the Council's comments; the actions taken by other parties pursuant to the actions of the Federal Agency; and the effect that such actions will have on the affected National Register or eligible property. Receipt of this Report by the Chairman shall be evidence that the agency has satisfied its responsibilities for the proposed undertaking under Section 106 of the Act, Section 2(b) of the Executive Order and these regulations. The Council may issue a final report to the President and Congress under authority of Section 202(b) of the Act describing the actions taken by the agency in response to the Council's comments including recommendations for changes in Federal policy and programs, as appropriate.

(8) *Continuing Review Jurisdiction.* When the Council has met and commented upon an undertaking that will require subsequent site-specific undertakings by a Federal agency, the Council's comment extends only to the undertaking as reviewed. The Agency Official shall ensure that subsequent actions related to the undertaking that have not been considered by the Council will be submitted to the Council for review in accordance with these regulations.

EDITORIAL NOTE: At 47 FR 24306, June 4, 1982 § 800.6(c)(1) and (d)(2)(ii) were suspended until further notice, effective July 6, 1982.

§ 800.7 Resources discovered during construction.

(a) *Federal Agency Responsibilities.* If a Federal agency has previously met its responsibilities for identified National Register and eligible properties under Section 106 of the Act, Section 2(b) of the Executive Order, these regulations, and the National Environmental Policy Act (42 U.S.C. 4321 et seq.), and an Agency Official finds or is notified after contruction has started that an undertaking will have an effect on a previously unidentified National Register or eligible property, the Federal agency may fulfill its responsibilities under Section 106 of the Act, Section 2(b) of the Executive Order, and these regulations, by complying with the requirements of the Archeological and Historic Preservation Act (16 U.S.C. 469(a)) as implemented by the Secretary, unless the Secretary determines that the significance of the property, the effect, and any proposed mitigation actions warrant Council consideration. If the Secretary determines the Council's comments are warranted, the Agency Official shall request the comments of the Council.

(b) *Council Comments.* Within 30 days of receipt of a request for comments from an Agency Official under this section, the Executive Director, with the concurrence of the Chairman, shall transmit comments on behalf of the Council to the Agency

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Official or the Chairman shall convene a meeting of the Council pursuant to § 800.6.

FEDERAL PROGRAM COORDINATION

§ 800.8 Programmatic Memorandum of Agreement.

(a) *Application.* At the request of an Agency Official, the Council will consider execution of a Programmatic Memorandum of Agreement to fulfill an agency's responsibilities under Section 106 of the Act and Section 2(b) of the Executive Order for a particular program or class of undertakings that would otherwise require numerous individual requests for comments under these regulations. Within 30 days after the request, the Executive Director will notify the agency official whether a Programmatic Memoranda of Agreement may be used. Generally, Programmatic Memorandum of Agreement may be used in the following types of situations:

(1) Non-site-specific undertakings, including Federal approval of State plans pursuant to Federal legislation, development of comprehensive or area-wide plans, agency recommendations for legislation, and the establishment or modification of regulations and planning guidelines.

(2) Undertakings that are repetitive in nature and have essentially the same effect on National Register or eligible properties.

(3) Programs that are designed to further the preservation and enhancement of National Register or eligible properties.

(4) Programs with statutory time limits for project application and approval that would not permit compliance with these regulations in the normal manner.

(b) *Consultation Process.* Upon determination by the Executive Director that a Programmatic Memorandum of Agreement is appropriate, the Agency Official and the Executive Director shall consult to develop a Programmatic Memorandum of Agreement. When the Agreement will affect a particular State or States, the appropriate State Historic Preservation Officer may be a party to the consultation. When the Agreement involves issues national in scope, the President of the National Conference of State Historic Preservation Officers or a designated representative may be a party to the consultation. The Executive Director may invite other parties, including other Federal agencies with responsibilities which may be affected by the Agreement, to participate in the consultation and may hold a Public Information Meeting (see § 800.6(b)(3)) on the proposed Agreement.

(c) *Preparation of the Agreement.* It shall be the responsibility of the Executive Director to prepare each Agreement. At least 30 days before executing an Agreement, the Council shall publish notice of the proposed Agreement in the FEDERAL REGISTER inviting comments from Federal, State, and local agencies and the public. The Council will make copies available to interested parties and to appropriate A-95 clearinghouses.

(d) *Execution of the Agreement.* After consideration of comments received and completion of any necessary revisions, the Executive Director, the Agency Official, and other parties, if appropriate, shall sign the Agreement and it shall be sent to the Chairman for ratification.

(e) *Chairman's Review.* Upon receipt of a signed Agreement, the Chairman shall review the Agreement and within 30 days shall take one of the following actions:

(1) Ratify the Agreement, at which time it will take effect.

(2) Submit the Agreement to the full Council for approval.

(3) Disapprove the Agreement.

(f) *Effect of the Agreement.* An approved Programmatic Memorandum of Agreement shall constitute the comments of the Council on all individual undertakings carried out pursuant to the terms of the Agreement and, unless otherwise provided by the Agreement, shall satisfy the agency's responsibilities under Section 106 of the Act, Section 2(b) of the Executive Order, and these regulations for all undertakings carried out in accordance with the Agreement.

(g) *Notice.* Notice of an approved Programmatic Agreement shall be published by the Council in the FEDERAL REGISTER. Copies shall be distributed through appropriate A-95 clearinghouses and the consulting parties shall make copies readily available to the public. The Programmatic Memorandum of Agreement should be included in the final environmental impact statement prepared pursuant to the National Environmental Policy Act.

(h) *Term.* Unless otherwise provided by the Agreement, duly executed Programmatic Memorandum of Agreement shall remain in effect until revoked by any one of the signatories. The Agency Official shall submit a report annually to the Executive Director and other signatories on all actions taken pursuant to the Agreement, including any recommendations for modification or termination of the Agreement. The Executive Director and other signatories shall review the report and determine whether modification or termination of the Agreement is appropriate.

§ 800.9 Coordination with agency requirements under the National Environmental Policy Act (42 U.S.C. 4321 et seq.).

Section 101(b)(4) of the National Environmental Policy Act (NEPA) declares that one objective of national environmental policy is to "preserve important historic, cultural, and natural aspects of our national heritage and maintain, wherever possible, an environment which supports diversity and variety of individual choice." In order to meet this objective, Federal agencies should coordinate NEPA compliance with the separate responsibilities of the National Historic Preservation Act and Executive Order 11593 to ensure that historic and cultural properties are given proper consideration in the preparation of environmental assessments and environmental impact statements. Agency obligations pursuant to the National Historic Preservation Act and Executive Order 11593 are independent from NEPA requirements and must be complied with even when an environmental impact statement is not required. Agencies should also be aware that the threshold for compliance with Section 106 and the Executive Order is less than that for preparation of an environmental impact statement. The former applies to any Federal, federally assisted or federally licensed undertaking having an effect on a National Register or eligible property, while the latter extends only to major Federal actions significantly affecting the human environment. Where both NEPA and the Act or Executive Order are applicable, the Council on Environmental Quality, in its National Environmental Policy Act—Regulations (40 CFR 1502.25), directs that draft environmental impact statements prepared under Section 102(2)(C) of NEPA shall, to the fullest extent possible, be prepared with and integrated with other environmental impact analyses and related surveys and studies required by other authorities—such as the National Historic Preservation Act and Executive Order 11593. Preparation of a draft environmental impact statement may fulfill the requirements for reports and documentation under these authorities.

Circulation of the statement for comment pursuant to Section 102(2)(C) of NEPA shall constitute a request for Council comments under § 800.4 of these regulations if Federal agencies so request in cover letters circulated with draft environmental impact statements. To coordinate the independent responsibilities of the Act and NEPA, Federal agencies should undertake compliance with these regulations whenever National Register or eligible properties may be affected by an undertaking. The following subsections indicate the appropriate means of coordinating the substance and timing of agency compliance with NEPA, Section 106, and Section 2(b). The Council will review agency environmental impact statements in accordance with this section. Adherence to these provisions will provide Federal agencies with an adequate record of the consideration of National Register and eligible properties during the planning process and will facilitate the production of a single document to meet the requirements of NEPA, Section 106, Executive Order 11593, and these regulations.

(a) It is normally intended that the Section 106/Executive Order compliance period run concurrently with

prescribes that certain reports and documents be made available to it. The content of such reports is set forth below. The purpose is to provide sufficient information for the Council to evaluate the significance of affected National Register and eligible properties, understand the objectives and requirements of the undertaking, assess the effect in terms of the criteria specified in these regulations, and analyze the feasibility and prudence of alternatives. The Council further recognizes that the Act requires that National Register and eligible properties should be preserved "as a living part of our community life and development," and considers those elements in an undertaking that have relevance beyond historical and cultural concerns. To assist it in weighing the public interest, the Council seeks information not only bearing upon physical, esthetic, or environmental effects but also information concerning economic, social, and other benefits or detriments that will result from the undertaking. Agencies should consider these reports in the context of their compliance with the National Environmental Policy Act and incorporate their content in environmental assessments, draft environmental impact statements and final environmental impact statements as specified in § 800.9.

(a) *Documentation for Determination of No Adverse Effect.* Adequate documentation of a Determination of No Adverse Effect pursuant to § 800.4 should include the following information:

(1) A description of the agency's involvement with the proposed undertaking with citations of the agency's program authority and applicable implementing regulations, procedures, and guidelines;

(2) A description of the proposed undertaking including, as appropriate, photographs, maps, drawings, and specifications;

(3) A list of National Register and eligible properties that will be affected by the undertaking, including a description of the property's physical appearance and significance;

(4) A brief statement explaining why each of the Criteria of Adverse Effect (See § 800.3) was found inapplicable;

(5) Written views of the State Historic Preservation Officer concerning the Determination of No Adverse Effect, if available; and,

(6) An estimate of the cost of the undertaking, identifying Federal and non-Federal shares.

(b) *Preliminary Case Reports.* Preliminary Case Reports should be submitted with a request for comments pursuant to § 800.4 and should include the following information:

(1) A description of the agency's involvement with the proposed undertaking with citations of the agency's program authority and applicable implementing regulations, procedures, and guidelines;

(2) The status of this project in the agency's approval process;

(3) The status of this project in the agency's National Environmental Policy Act compliance process and the target date for completion of all environmental responsibilities;

(4) A description of the proposed undertaking including, as appropriate, photographs, maps, drawings, and specifications;

(5) A description of the National Register or eligible properties affected by the undertaking, including a description of the properties' physical appearance and significance;

(6) A brief statement explaining why any of the Criteria of Adverse Effect (See § 800.3) apply;

(7) Written views of the State Historic Preservation Officer concerning the effect on the property, if available;

(8) The views of other Federal agencies, State and local governments, and the other groups or individuals, when known;

(9) A description and analysis of alternatives that would avoid the adverse effects;

(10) A description and analysis of alternatives that would mitigate the adverse effects; and,

(11) An estimate of the cost of the undertaking, identifying Federal and non-Federal shares.

(c) *Reports for Council Meeting.* Consideration of an undertaking by either the full Council or a panel pursuant to § 800.6 is based on reports from the Executive Director, the Agency Official, the Secretary of the Interior, the State Historic Preservation Officer, and others. The reports consist of the following:

(1) *Secretary of the Interior's Report.* The report from the Secretary shall include a verification of the legal and historical status of the property and an assessment of the historical, architectural, archeological, or cultural significance of the property.

(2) *Agency Official's Report.* The report from the Agency Offical requesting comments shall include a general discussion and chronology of the proposed undertaking; an account of the steps taken to comply with the National Environmental Policy Act (NEPA); any relevant supporting documentation in studies that the agency has completed; an evaluation of the effect of the undertaking upon the property, with particular reference to the impact on the historical, architectural, archeological, and cultural values; steps taken or proposed by the agency to avoid or mitigate adverse effects of the undertaking; a thorough discussion of alternate courses of action; and an analysis comparing the advantages resulting from the undertaking with the disadvantages resulting from the adverse effects on National Register or eligible properties. The Agency Official shall arrange for the submission and presentation of any report by a grantee, permittee, licensee, or other party receiving Federal assistance or approval to carry out the undertaking.

(3) *Other Federal Agency Reports.* A report from any other Federal agency involved in the undertaking or a related action that affects the property in question, including a general description and chronology of that agency's involvement and its relation to the undertaking being considered by the Council.

(4) *State Historic Preservation Officer's Report.* A report from the State Historic Preservation Officer should include an assessment of the significance of the property within the State preservation program; an evaluation of the effect of the undertaking upon the property and its specific components; an evaluation of known alternate courses of action; a discussion of present or proposed participation of State and local agencies or organizations in preserving or assisting in preserving the property; an indication of the support or opposition of units of government and public and private agencies and organizations within the State; and the recommendation of the State Historic Preservation Officer.

(5) *Executive Director's Report.* A report from the Executive Director shall include a description of the actions taken pursuant to these regulations, an evaluation of the effect of the undertaking on the property, a review of any known alternate courses of action, an analysis comparing the advantages resulting from the undertaking with the disadvantages resulting from the adverse effects on National Register or eligible properties and recommendations for Council action.

(6) *Other Reports.* The Council will consider other pertinent reports, statements, correspondence, transcripts, minutes, and documents received from any and all parties, public or private. Reports submitted pursuant to this section should be received by the Council at least 7 days prior to a Council meeting.

§ 800.14 Supplementary guidance.

The Executive Director may issue further guidance to interpret these regulations to assist Federal agencies and State Historic Preservation Officers in meeting their responsibilities. The guidelines are for informational purposes only and will be published in the FEDERAL REGISTER and will be readily available to the public.

§ 800.15 Public participation.

The Council encourages maximum public participation in the review process under these regulations. The Council, Federal agencies, and State Historic Preservation Officers should seek assistance from the public including other Federal agencies, units of local and State government, public and private organizations, individuals and federally recognized Indian tribes in evaluating National Register and el-

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the NEPA review process. Initiation of the consideration of historic and cultural resources should coincide with the initiation of other environmental reviews. To the maximum extent possible, agencies should reflect the status of compliance with Section 106, the Executive Order, and these regulations in all documents prepared under NEPA (environmental assessments, draft environmental impact statements, and final environmental impact statements) to provide the public with the fullest and most complete information available on effects on historic and cultural resources and alternatives to reduce those effects. If the commenting process under Section 106 and the Executive Order is not completed before the final environmental impact statement is issued, as with undertakings where subsequent design stage reviews occur, agencies should include the council's comments in any supplemental statement that is prepared pursuant to NEPA.

(b) Federal agencies should initiate compliance with Section 106 of the Act and the Executive Order in accordance with these regulations during initial environmental assessments that are undertaken to meet the requirements of NEPA and agency environmental procedures. In any event, this should occur no later than during the preparation of the draft environmental impact statement. Identification of National Register and eligible properties should be carried out in accordance with § 800.4 of these regulations. Potential effects should then be evaluated in accordance with the Criteria of Effect and Adverse Effect in § 800.3 of these regulations. The environmental assessment and the draft environmental impact statement should fully describe any National Register or eligible properties within the area of the undertaking's potential environmental impact and the nature of the undertaking's effect on them.

(c) If evaluation of the effect resulted in a Determination of No Effect or No Adverse Effect under § 800.4, that finding, along with supporting documentation, should be included or referenced in the environmental assessment and the draft environmental impact statement.

(d) If evaluation of the effect resulted in a Determination of Adverse Effect, that finding and a copy of the agency's request for the Council's comments in accordance with § 800.4(d)(1) of these regulations should be included in or referenced in the environmental assessment and the draft environmental impact statement. Agencies should include all available relevant information on National Register and eligible properties, the effects of the undertaking and alternative courses of action so that the draft environmental impact statement can be submitted as the preliminary case report under § 800.13(b) of these regulations. In some instances, the Section 106/Executive Order commenting process will be completed prior to issuance of a draft environmental impact statement. In that event, the comments of the Council should be included in the draft.

(e) Completion of the Council commenting process in accordance with these regulations should precede issuance of the final environmental impact statement. Comments of the Council obtained pursuant to § 800.6 or § 800.8 of these regulations should be incorporated into the final statement.

(f) The Council, in its review of environmental impact statements for undertakings that affect National Register or eligible properties, will look for evidence of proper compliance with Section 106 of the Act, Section 2(b) of the Executive Order, and these regulations. The Council's views on the agency's compliance with those authorities will be included in its comments on environmental impact statements.

§ 800.10 Coordination with the Presidential Memorandum on Environmental Quality and Water Resources Management.

Federal Agencies with water resources responsibilities shall, not later than three months after publication of these regulations as finally adopted in the FEDERAL REGISTER, publish procedures to implement these regulations as required by the Presidential Memorandum on Environmental Quality and Water Resources Management.

Each agency shall consult with the Council while developing its procedures and shall provide an opportunity for public review and comment on their proposed regulations. Agency procedures shall be effective when the Chairman approves them as conforming to the Presidential Memorandum and these regulations. Agency procedures must at a minimum include acceptable measures to prevent or mitigate losses of historic or cultural resources and provisions to insure that all projects not yet constructed will comply with these regulations. Additionally, such procedures shall prescribe a clear way to identify funding for environmental mitigation in an agency's appropriation requests. The procedures shall be approved by the Chairman within 60 days if they are consistent with these regulations. Once in effect they shall be filed with the Council and made readily available to the public. Agencies are also encouraged to publish explanatory guidance for the procedures.

§ 800.11 Counterpart regulations.

Individual Federal agencies may, in accordance with Section 1(3) of the Executive Order, the President's Memorandum on Environmental Quality and Water Resources Management, and these regulations, choose to adopt counterpart regulations related to their specific programs and authorities to assist in meeting their responsibilities under Section 106 of the Act and Section 2(b) of the Executive Order.

(a) Responsibilities of individual Federal agencies pursuant to § 800.4 may be met by counterpart regulations jointly drafted by that agency and the Executive Director and approved by the Chairman. The Federal agency shall provide ample opportunity for public participation in the development of such counterpart regulations, including publication in the FEDERAL REGISTER as proposed and final rule making with provision for a minimum 60 day period for public comment. Once in effect such counterpart regulations may, as appropriate, supercede the requirements of § 800.4. The Federal agency shall file approved counterpart regulations with the Council and shall make them readily available to the public.

(b) Counterpart regulations may include:

(1) A definition of undertaking as it applies to that agency's particular activities and programs,

(2) Methods to identify National Register and eligible properties for each class of undertakings,

(3) Methods to evaluate effects on National Register or eligible properties,

(4) Authorization for non-Federal participation in the consultation process, and

(5) Standards, guidelines and other measures to ensure avoidance or mitigation of adverse effects on National Register and eligible properties for each class of undertakings.

(c) To the maximum extent possible, counterpart regulations developed pursuant to this section should be intergrated with agency regulations for the National Environmental Policy Act.

OTHER PROVISIONS

§ 800.12 Investigation of threats to National Register and eligible properties.

(a) The Council is frequently advised by State Historic Preservation Officers and others of undertakings that threaten National Register or eligible properties and that appear to involve a Federal agency. In order to protect these properties, the Executive Director investigates these matters, generally by writing to the Federal agency that appears to be involved in the undertaking. Federal agencies should respond to these inquiries within 30 days. If there is Federal involvement in the undertaking, the agency shall fulfill its responsibilities under these regulations.

(b) The Council will exercise its authority to comment to Federal agencies under these regulations in certain special situations even though written notice that an undertaking will have an adverse effect has not been received.

§ 800.13 Reports to the Council.

In order to meet responsibilities under these regulations, the Council

igible properties, determining effect, and developing alternatives to avoid or mitigate an adverse effect. The public has considerable information available that could assist Federal agencies, the State Historic Preservation Officer and the Council in meeting their responsibilities under these regulations. The Council especially urges that Federal agencies make every effort to involve grantees, permittees, licensees, and other parties in interest in the consultation process. To this end, the Council, the Agency Official, and the State Historic Preservation Officer should:

(a) Make readily available, to the extent possible, documents, materials, and other information and data concerning the undertaking and effects on National Register and eligible properties that may be of interest to the public. Such information should be made available within the limits of the Freedom of Information Act (5 U.S.C. 552) and need not necessarily include information on budget, financial, personnel, and other proprietary matters or the specific location of archeological sites. Material to be made available to the public by the agency and the State Historic Preservation Officer should be provided to the public at the minimum cost permissible.

(b) Make the public aware of Public Information Meetings (§ 800.6(b)(3)), full or panel Council meetings (§ 800.6(d)), and the availability of other information related to the review process under these regulations such as a Determination of No Effect, a Determination of No Adverse Effect, a Memorandum of Agreement (See § 800.6(c)) or a Programmatic Memorandum of Agreement (See § 800.8). The purpose of such notice is to inform persons, agencies, and organizations that may be interested or affected by the proposed undertaking of the opportunity to participate in the review process under these regulations. This may include:

(1) Mailing notice to those who have requested it on an individual undertaking or Programmatic Memorandum of Agreement.

(2) Use of notice in local newspaper, local media, and newsletters that may be expected to reach potentially interested persons.

(3) Posting of notice on- and off-site in the area where the undertaking is proposed to be located.

(c) Solicit relevant information from the public during the identification of National Register and eligible properties, the evaluation of effects, and the consideration of alternatives.

(d) Hold or sponsor public meetings on proposed undertakings and make diligent efforts to include the public.

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NATIONAL ENVIRONMENTAL ACT OF 1969
42 U.S.C. 4321, P.L. 91-190, 83 STAT. 852

CHAPTER 55—NATIONAL ENVIRONMENTAL POLICY

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 4374, 5175, 5304, 6508, 7364, 7616, 8302, 8775, 10133, 10134, 10161, 10196 of this title; title 10 sections 2391, 2687; title 15 sections 719f, 719h, 793; title 16 sections 410hh, 470h-2, 590h, 839d, 1536, 1602, 1604, 2705, 3164, 3168, 3232, 3233; title 21 section 343; title 23 sections 103, 117; title 25 section 640d-26; title 30 sections 185, 1292; title 33 sections 59c-2, 59k, 59n, 59o, 1293a, 1344, 1371, 1505; title 43 sections 421h, 1351, 1577, 1597, 1638, 1652, 1866, 1904, 2006; title 45 sections 917, 1010, 1207, 1212; title 49 App. sections 1604, 2208.

§ 4321. Congressional declaration of purpose

The purposes of this chapter are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

(Pub. L. 91-190, § 2, Jan. 1, 1970, 83 Stat. 852.)

SHORT TITLE

Section 1 Pub. L. 91-190 provided: "That this Act [enacting this chapter] may be cited as the 'National Environmental Policy Act of 1969'."

TRANSFER OF FUNCTIONS

Enforcement functions of Secretary or other official in Department of Interior related to compliance with system activities requiring coordination and approval under this chapter, and enforcement functions of Secretary or other official in Department of Agriculture, insofar as they involve lands and programs under jurisdiction of that Department, related to compliance with this chapter with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of date of initial operation of the Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§ 102(e), (f), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out in the Appendix to Title 5, Government Organization and Employees.

REORGANIZATION PLAN NO. 3 OF 1970

Eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat. 2086

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, July 9, 1970, pursuant to the provisions of Chapter 9 of Title 5 of the United States Code.

ENVIRONMENTAL PROTECTION AGENCY

SECTION 1. ESTABLISHMENT OF AGENCY

(a) There is hereby established the Environmental Protection Agency, hereinafter referred to as the "Agency."

(b) There shall be at the head of the Agency the Administrator of the Environmental Protection Agency, hereinafter referred to as the "Administrator." The Administrator shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter provided for Level II of the Executive Schedule Pay Rates (5 U.S.C. 5313).

(c) There shall be in the Agency a Deputy Administrator of the Environmental Protection Agency who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter provided for Level III of the Executive Schedule Pay Rates (5 U.S.C. 5314). The Deputy Administrator shall perform such functions as the Administrator shall from time to time assign or delegate, and shall act as Administrator during the absence or disability of the Administrator or in the event of a vacancy in the office of Administrator.

(d) There shall be in the Agency not to exceed five Assistant Administrators of the Environmental Protection Agency who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter provided for Level IV of the Executive Schedule Pay Rates (5 U.S.C. 5315). Each Assistant Administrator shall perform such functions as the Administrator shall from time to time assign or delegate.

SEC. 2. TRANSFERS TO ENVIRONMENTAL PROTECTION AGENCY

(a) There are hereby transferred to the Administrator:

(1) All functions vested by law in the Secretary of the Interior and the Department of the Interior which are administered through the Federal Water Quality Administration, all functions which were transferred to the Secretary of the Interior by Reorganization Plan No. 2 of 1966 (80 Stat. 1608), and all functions vested in the Secretary of the Interior or the Department of the Interior by the Federal Water Pollution Control Act or by provisions of law amendatory or supplementary thereof [see 33 U.S.C. 1251 et seq.].

(2)(i) The functions vested in the Secretary of the Interior by the Act of August 1, 1958, 72 Stat. 479, 16 U.S.C. 742d-1 (being an Act relating to studies on the effects of insecticides, herbicides, fungicides, and pesticides upon the fish and wildlife resources of the United States), and (ii) the functions vested by law in the Secretary of the Interior and the Department of the Interior which are administered by the Gulf Breeze Biological Laboratory of the Bureau of Commercial Fisheries at Gulf Breeze, Florida.

(3) The functions vested by law in the Secretary of Health, Education, and Welfare or in the Department of Health, Education, and Welfare which are administered through the Environmental Health Service, including the functions exercised by the following components thereof:

(i) The National Air Pollution Control Administration,

(ii) The Environmental Control Administration:

(A) Bureau of Solid Waste Management,

(B) Bureau of Water Hygiene,

(C) Bureau of Radiological Health,

except that functions carried out by the following components of the Environmental Control Administration of the Environmental Health Service are not transferred: (i) Bureau of Community Environmental Management, (ii) Bureau of Occupational Safety and Health, and (iii) Bureau of Radiological Health, insofar as the functions carried out by the latter Bureau pertain to (A) regulation of radiation from consumer products, including electronic product radiation, (B) radiation as used in the healing arts, (C) occupational exposures to radiation, and (D) research, technical assistance, and training related to clauses (A), (B), and (C).

(4) The functions vested in the Secretary of Health, Education, and Welfare of establishing tolerances for pesticide chemicals under the Federal Food, Drug, and Cosmetic Act, as amended, 21 U.S.C. 346, 346a, and 348, together with authority, in connection with the functions transferred, (i) to monitor compliance with the tolerances and the effectiveness of surveillance and enforcement, and (ii) to provide technical assistance to the States and conduct research under the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 301 et seq.], and the Public Health Service Act, as amended [42 U.S.C. 201 et seq.].

(5) So much of the functions of the Council on Environmental Quality under section 204(5) of the National Environmental Policy Act of 1969 (Public Law 91-190, approved January 1, 1970, 83 Stat. 855) [42 U.S.C. 4344(5)], as pertains to ecological systems.

(6) The functions of the Atomic Energy Commission under the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.], administered through its Division of Radiation Protection Standards, to the extent that such functions of the Commission consist of establishing generally applicable environmental standards for the protection of the general environment from radioactive material. As used herein, standards mean limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radio-active material.

(7) All functions of the Federal Radiation Council (42 U.S.C. 2021(h)).

(8)(i) The functions of the Secretary of Agriculture and the Department of Agriculture under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 135-135k) [7 U.S.C. 136 et seq.], (ii) the functions of the Secretary of Agriculture and the Department of Agriculture under section 408(*l*) of the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 346a(*l*)), and (iii) the functions vested by law in the Secretary of Agriculture and the Department of Agriculture which are administered through the Environmental Quality Branch of the Plant Protection Division of the Agricultural Research Service.

(9) So much of the functions of the transferor officers and agencies referred to in or affected by the foregoing provisions of this section as is incidental to or necessary for the performance by or under the Administrator of the functions transferred by those provisions or relates primarily to those functions. The transfers to the Administrator made by this section shall be deemed to include the transfer of (1) authority, provided by law, to prescribe regulations relating primarily to the transferred functions, and (2) the functions vested in the Secretary of the Interior and the Secretary of Health, Education, and Welfare by section 169(d)(1)(B) and (3) of the Internal Revenue Code of 1954 (as enacted by section 704 of the Tax Reform Act of 1969, 83 Stat. 668); but shall be deemed to exclude the transfer of the functions of the Bureau of Reclamation under section 3(b)(1) of the Water Pollution Control Act (33 U.S.C. [former] 466a(b)(1)).

(b) There are hereby transferred to the Agency:

(1) From the Department of the Interior, (i) the Water Pollution Control Advisory Board (33 U.S.C. [former] 466f) [see 33 U.S.C. 1363], together with its functions, and (ii) the hearing boards provided for in sections 10(c)(4) and 10(f) of the Federal Water Pollution Control Act, as amended (33 U.S.C. [former] 466g(c)(4); 466g(f)). The functions of the Secretary of the Interior with respect to being or designating the Chairman of the Water Pollution Control Advisory Board are hereby transferred to the Administrator.

(2) From the Department of Health, Education, and Welfare, the Air Quality Advisory Board (42 U.S.C. 1857e) [42 U.S.C. 7417], together with its functions. The functions of the Secretary of Health, Education, and Welfare with respect to being a member and the Chairman of that Board are hereby transferred to the Administrator.

SEC. 3. PERFORMANCE OF TRANSFERRED FUNCTIONS

The Administrator may from time to time make such provisions as he shall deem appropriate authorizing the performance of any of the functions transferred to him by the provisions of this reorganization plan by any other officer, or by any organizational entity or employee, of the Agency.

SEC. 4. INCIDENTAL TRANSFERS

(a) So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available or to be made available in connection with the functions transferred to the Administrator or the Agency by this reorganization plan as the Director of the Office of Management and Budget shall determine shall be transferred to the Agency at such time or times as the Director shall direct.

(b) Such further measures and dispositions as the Director of Office of Management and Budget shall deem to be necessary in order to effectuate the transfers referred to in subsection (a) of this section shall be carried out in such manner as he shall direct and by such agencies as he shall designate.

SEC. 5. INTERIM OFFICERS

(a) The President may authorize any person who immediately prior to the effective date of this reorganization plan held a position in the executive branch of the Government to act as Administrator until the office of Administrator is for the first time filled pursuant to the provisions of this reorganization plan or by recess appointment, as the case may be.

(b) The President may similarly authorize any such person to act as Deputy Administrator, authorize any such person to act as Assistant Administrator, and authorize any such person to act as the head of any principal constituent organizational entity of the Administration.

(c) The President may authorize any person who serves in an acting capacity under the foregoing provisions of this section to receive the compensation attached to the office in respect of which he so serves. Such compensation, if authorized, shall be in lieu of, but not in addition to, other compensation from the United States to which such person may be entitled.

SEC. 6. ABOLITIONS

(a) Subject to the provisions of this reorganization plan, the following, exclusive of any functions, are hereby abolished:

(1) The Federal Water Quality Administration in the Department of the Interior (33 U.S.C. [former] 466-1).

(2) The Federal Radiation Council (73 Stat. 690; 42 U.S.C. 2021(h)).

(b) Such provisions as may be necessary with respect to terminating any outstanding affairs shall be made by the Secretary of the Interior in the case of the Federal Water Quality Administration and by the Administrator of General Services in the case of the Federal Radiation Council.

SEC. 7. EFFECTIVE DATE

The provisions of this reorganization plan shall take effect sixty days after the date they would take effect under 5 U.S.C. 906(a) in the absence of this section.

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 3 of 1970, prepared in accordance with chapter 9 of title 5 of the United States Code and providing for an Environmental Protection Agency. My reasons for transmitting this plan are stated in a more extended accompanying message.

After investigation, I have found and hereby declare that each reorganization included in Reorganization Plan No. 3 of 1970 is necessary to accomplish one or more of the purposes set forth in section 901(a) of title 5 of the United States Code. In particular, the plan is responsive to section 901(a)(1), "to promote the better execution of the laws, the more effective management of the executive branch and of its agencies and functions, and the expeditious administration of the public business;" and section 901(a)(3), "to increase the efficiency of the operations of the Government to the fullest extent practicable."

The reorganizations provided for in the plan make necessary the appointment and compensation of new officers as specified in section 1 of the plan. The rates of compensation fixed for these officers are comparable to those fixed for other officers in the executive branch who have similar responsibilities.

Section 907 of title 5 of the United States Code will operate to preserve administrative proceedings, including any public hearing proceedings, related to the transferred functions, which are pending immediately prior to the taking effect of the reorganization plan.

The reorganization plan should result in more efficient operation of the Government. It is not practical, however, to itemize or aggregate the exact expenditure reductions which will result from this action.

RICHARD NIXON.

THE WHITE HOUSE, July 9, 1970.

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

As concern with the condition of our physical environment has intensified, it has become increasingly clear that we need to know more about the total environment—land, water and air. It also has become increasingly clear that only by reorganizing our Federal efforts can we develop that knowledge, and effectively ensure the protection, development and enhancement of the total environment itself.

The Government's environmentally-related activities have grown up piecemeal over the years. The time has come to organize them rationally and systematically. As a major step in this direction, I am transmitting today two reorganization plans: one to establish an Environmental Protection Agency, and one to establish, within the Department of Commerce, a National Oceanic and Atmospheric Administration.

ENVIRONMENTAL PROTECTION AGENCY (EPA)

Our national government today is not structured to make a coordinated attack on the pollutants which debase the air we breathe, the water we drink, and the land that grows our food. Indeed, the present governmental structure for dealing with environmental pollution often defies effective and concerted action.

Despite its complexity, for pollution control purposes the environment must be perceived as a single, interrelated system. Present assignments of departmental responsibilities do not reflect this interrelatedness.

Many agency missions, for example, are designed primarily along media lines—air, water, and land. Yet the sources of air, water, and land pollution are interrelated and often interchangeable. A single source may pollute the air with smoke and chemicals, the land with solid wastes, and a river or lake with chemical and other wastes. Control of the air pollution may produce more solid wastes, which then pollute the land or water. Control of the water-polluting effluent may convert it into solid wastes, which must be disposed of on land.

Similarly, some pollutants—chemicals, radiation, pesticides—appear in all media. Successful control of them at present requires the coordinated efforts of a variety of separate agencies and departments. The results are not always successful.

A far more effective approach to pollution control would:

—identify pollutants.
—trace them through the entire ecological chain, observing and recording changes in form as they occur.
—Determine the total exposure of man his environment.
—Examine interactions among forms of pollution.
—Identify where in the ecological chain interdiction would be most appropriate.

In organizational terms, this requires pulling together into one agency a variety of research, monitoring, standard-setting and enforcement activities now scattered through several departments and agencies. It also requires that the new agency include sufficient support elements—in research and in aids to State and local antipolution programs, for example—to give it the needed strength and potential for carrying out its mission. The new agency would also, of course, draw upon the results of research conducted by other agencies.

COMPONENTS OF THE EPA

Under the terms of Reorganization Plan No. 3, the following would be moved to the new Environmental Protection Agency:

—The functions carried out by the Federal Water Quality Administration (from the Department of the Interior).
—Functions with respect to pesticides studies now vested in the Department of the Interior.
—The functions carried out by the National Air Pollution Control Administration (from the Department of Health, Education, and Welfare).
—The functions carried out by the Bureau of Solid Waste Management and the Bureau of Water Hygiene, and portions of the functions carried out by the Bureau of Radiological Health of the Environmental Control Administration (from the Department of Health, Education, and Welfare).
—Certain functions with respect to pesticides carried out by the Food and Drug Administration (from the Department of Health, Education, and Welfare).
—Authority to perform studies relating to ecological systems now vested in the Council on Environmental Quality.
—Certain functions respecting radiation criteria and standards now vested in the Atomic Energy Commission and the Federal Radiation Council.
—Functions respecting pesticides registration and related activities now carried out by the Agricultural Research Service (from the Department of Agriculture).

With its broad mandate, EPA would also develop competence in areas of environmental protection that have not previously been given enough attention, such, for example, as the problem of noise, and it would provide an organization to which new programs in these areas could be added.

In brief, these are the principal functions to be transferred:

Federal Water Quality Administration.—Charged with the control of pollutants which impair water quality, it is broadly concerned with the impact of degraded water quality. It performs a wide variety of functions, including research, standard-setting and enforcement, and provides construction grants and technical assistance.

Certain pesticides research authority from the Department of the Interior.—Authority for research on the effects of pesticides on fish and wildlife would be provided to the EPA through transfer of the specialized research authority of the pesticides act enacted in 1958. Interior would retain its responsibility to do research on all factors affecting fish and wildlife. Under this provision, only one laboratory would be transferred to the EPA—the Gulf Breeze Biological Laboratory of the Bureau of Commercial Fisheries. The EPA would work closely with the fish and wildlife laborato-

ries remaining with the Bureau of Sport Fisheries and Wildlife.

National Air Pollution Control Administration.—As the principal Federal agency concerned with air pollution, it conducts research on the effects of air pollution, operates a monitoring network, and promulgates criteria which serve as the basis for setting air quality standards. Its regulatory functions are similar to those of the Federal Water Quality Administration. NAPCA is responsible for administering the Clean Air Act, which involves designating air quality regions, approving State standards and providing financial and technical assistance to State Control agencies to enable them to comply with the Act's provisions. It also sets and enforces Federal automotive emission standards.

Elements of the Environmental Control Administration.—ECA is the focal point within HEW for evaluation and control of a broad range of environmental health problems, including water quality, solid wastes, and radiation. Programs in the ECA involve research, development of criteria and standards, and the administration of planning and demonstration grants. From the ECA, the activities of the Bureaus of Water Hygiene and Solid Waste Management and portions of the activities of the Bureau of Radiological Health would be transferred. Other functions of the ECA including those related to the regulation of radiation from consumer products and occupational safety and health would remain in HEW.

Pesticides research and standard-setting programs of the Food and Drug Administration.—FDA's pesticides program consists of setting and enforcing standards which limit pesticide residues in food. EPA would have the authority to set pesticide standards and to monitor compliance with them, as well as to conduct related research. However, as an integral part of its food protection activities, FDA would retain its authority to remove from the market food with excess pesticide residues.

General ecological research from the Council on Environmental Quality.—This authority to perform studies and research relating to ecological systems would be in addition to EPA's other specific research authorities, and it would help EPA to measure the impact of pollutants. The Council on Environmental Quality would retain its authority to conduct studies and research relating to environmental quality.

Environmental radiation standards programs.—The Atomic Energy Commission is now responsible for establishing environmental radiation standards and emission limits for radioactivity. Those standards have been based largely on broad guidelines recommended by the Federal Radiation Council. The Atomic Energy Commission's authority to set standards for the protection of the general environment from radioactive material would be transferred to the Environmental Protection Agency. The functions of the Federal Radiation Council would also be transferred. AEC would retain responsibility for the implementation and enforcement of radiation standards through its licensing authority.

Pesticides registration program of the Agricultural Research Service.—The Department of Agriculture is currently responsible for several distinct functions related to pesticides use. It conducts research on the efficacy of various pesticides as related to other pest control methods and on the effects of pesticides on non-target plants, livestock, and poultry. It registers pesticides, monitors their persistence and carries out an educational program on pesticide use through the extension service. It conducts extensive pest control programs which utilize pesticides.

By transferring the Department of Agriculture's pesticides registration and monitoring function to the EPA and merging it with the pesticides programs being transferred from HEW and Interior, the new agency would be given a broad capability for control over the introduction of pesticides into the environment.

The Department of Agriculture would continue to conduct research on the effectiveness of pesticides. The Department would furnish this information to the EPA, which would have the responsibility for actually licensing pesticides for use after considering environmental and health effects. Thus the new agency would be able to make use of the expertise of the Department.

ADVANTAGES OF REORGANIZATION

This reorganization would permit response to environmental problems in a manner beyond the previous capability of our pollution control programs. The EPA would have the capacity to do research on important pollutants irrespective of the media in which they appear, and on the impact of these pollutants on the total environment. Both by itself and together with other agencies, the EPA would monitor the condition of the environment—biological as well as physical. With these data, the EPA would be able to establish quantitative "environmental baselines"—critical if we are to measure adequately the success or failure of our pollution abatement efforts.

As no disjointed array of separate programs can, the EPA would be able—in concert with the States—to set and enforce standards for air and water quality and for individual pollutants. This consolidation of pollution control authorities would help assure that we do not create new environmental problems in the process of controlling existing ones. Industries seeking to minimize the adverse impact of their activities on the environment would be assured of consistent standards covering the full range of their waste disposal problems. As the States develop and expand their own pollution control programs, they would be able to look to one agency to support their efforts with financial and technical assistance and training.

In proposing that the Environmental Protection Agency be set up as a separate new agency, I am making an exception to one of my own principles: that, as a matter of effective and orderly administration, additional new independent agencies normally should not be created. In this case, however, the arguments against placing environmental protection activities under the jurisdiction of one or another of the existing departments and agencies are compelling.

In the first place, almost every part of government is concerned with the environment in some way, and affects it in some way. Yet each department also has its own primary mission—such as resource development, transportation, health, defense, urban growth or agriculture—which necessarily affects its own view of environmental questions.

In the second place, if the critical standard-setting functions were centralized within any one existing department, it would require that department constantly to make decisions affecting other departments—in which, whether fairly or unfairly, its own objectivity as an impartial arbiter could be called into question.

Because environmental protection cuts across so many jurisdictions, and because arresting environmental deterioration is of great importance to the quality of life in our country and the world, I believe that in this case a strong, independent agency is needed. That agency would, of course, work closely with and draw upon the expertise and assistance of other agencies having experience in the environmental area.

ROLES AND FUNCTIONS OF EPA

The principal roles and functions of the EPA would include:

—The establishment and enforcement of environmental protection standards consistent with national environmental goals.

—The conduct of research on the adverse effects of pollution and on methods and equipment for controlling it, the gathering of information on pollution, and the use of this information in strengthening environmental protection programs and recommending policy changes.

—Assisting others, through grants, technical assistance and other means in arresting pollution of the environment.
—Assisting the Council on Environmental Quality in developing and recommending to the President new policies for the protection of the environment.

One natural question concerns the relationship between the EPA and the Council on Environmental Quality, recently established by Act of Congress.

It is my intention and expectation that the two will work in close harmony, reinforcing each other's mission. Essentially, the Council is a top-level advisory group (which might be compared with the Council of Economic Advisers), while the EPA would be an operating, "line" organization. The Council will continue to be a part of the Executive Office of the President and will perform its overall coordinating and advisory roles with respect to all Federal programs related to environmental quality.

The Council, then, is concerned with all aspects of environmental quality—wildlife preservation, parklands, land use, and population growth, as well as pollution. The EPA would be charged with protecting the environment by abating pollution. In short, the Council focuses on what our broad policies in the environment field should be; the EPA would focus on setting and enforcing pollution control standards. The two are not competing, but complementary—and taken together, they should give us, for the first time, the means to mount an effectively coordinated campaign against environmental degradation in all of its many forms.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

The oceans and the atmosphere are interacting parts of the total environmental system upon which we depend not only for the quality of our lives, but for life itself.

We face immediate and compelling needs for better protection of life and property from natural hazards, and for a better understanding of the total environment—and understanding which will enable us more effectively to monitor and predict its actions, and ultimately, perhaps to exercise some degree of control over them.

We also face a compelling need for exploration and development leading to the intelligent use of our marine resources. The global oceans, which constitute nearly three-fourths of the surface of our planet, are today the least-understood, the least-developed, and the least-protected part of our earth. Food from the oceans will increasingly be a key element in the world's fight against hunger. The mineral resources of the ocean beds and of the oceans themselves, are being increasingly tapped to meet the growing world demand. We must understand the nature of these resources, and assure their development without either contaminating the marine environment or upsetting its balance.

Establishment of the National Oceanic and Atmospheric Administration—NOAA—within the Department of Commerce would enable us to approach these tasks in a coordinated way. By employing a unified approach to the problems of the oceans and atmosphere, we can increase our knowledge and expand our opportunities not only in those areas, but in the third major component of our environment, the solid earth, as well.

Scattered through various Federal departments and agencies, we already have the scientific, technological, and administrative resources to make an effective, unified approach possible. What we need is to bring them together. Establishment of NOAA would do so.

By far the largest of the components being merged would be the Commerce Department's Environmental Science Services Administration (ESSA), with some 10,000 employees (70 percent of NOAA's total personnel strength) and estimated Fiscal 1970 expenditures of almost $200 million. Placing NOAA within the Department of Commerce therefore entails the least dislocation, while also placing it within a Department which has traditionally been a center for service activities in the scientific and technological area.

COMPONENTS OF NOAA

Under terms of Reorganization Plan No. 4, the programs of the following organizations would be moved into NOAA:

—The Environmental Science Services Administration (from within the Department of Commerce).
—Elements of the Bureau of Commercial Fisheries (from the Department of the Interior).
—The marine sport fish program of the Bureau of Sport Fisheries and Wildlife (from the Department of the Interior).
—The Marine Minerals Technology Center of the Bureau of Mines (from the Department of the Interior).
—The Office of Sea Grant Programs (from the National Science Foundation).
—Elements of the United States Lake Survey (from the Department of the Army).

In addition, by executive action, the programs of the following organizations would be transferred to NOAA:

—The National Oceanographic Data Center (from the Department of the Navy).
—The National Oceanographic Instrumentation Center (from the Department of the Navy).
—The National Data Buoy Project (from the Department of Transportation).

In brief, these are the principal functions of the programs and agencies to be combined:

THE ENVIRONMENTAL SCIENCE SERVICES ADMINISTRATION

(ESSA) comprises the following components:

—The Weather Bureau (weather, marine, river and flood forecasting and warning).
—The Coast and Geodetic Survey (earth and marine description, mapping and charting).
—The Environmental Data Service (storage and retrieval of environmental data).
—The National Environmental Satellite Center (observation of the global environment from earth-orbiting satellites).
—The ESSA Research Laboratories (research on physical environmental problems).

ESSA's activities include observing and predicting the state of the oceans, the state of the lower and upper atmosphere, and the size and shape of the earth. It maintains the nation's warning systems for such natural hazards as hurricanes, tornadoes, floods, earthquakes and seismic sea waves. It provides information for national defense, agriculture, transportation and industry.

ESSA monitors atmospheric, oceanic and geophysical phenomena on a global basis, through an unparalleled complex of air, ocean, earth and space facilities. It also prepares aeronautical and marine maps and charts.

Bureau of Commercial Fisheries and marine sport fish activities.—Those fishery activities of the Department of the Interior's U.S. Fish and Wildlife Service which are ocean related and those which are directed toward commercial fishing would be transferred. The Fish and Wildlife Service's Bureau of Commercial Fisheries has the dual function of strengthening the fishing industry and promoting conservation of fishery stocks. It conducts research on important marine species and on fundamental oceanography, and operates a fleet of oceanographic vessels and a number of laboratories. Most of its activities would be transferred. From the Fish and Wildlife Service's Bureau of Sport Fisheries and Wildlife, the marine sport fishing program would be transferred. This involves five supporting laboratories and three ships engaged in activities to enhance marine sport fishing opportunities.

The Marine Minerals Technology Center is concerned with the development of marine mining technology.

Office of Sea Grant Programs.—The Sea Grant Program was authorized in 1966 to permit the Federal Government to assist the academic and industrial communities in developing marine resources and technology. It aims at strengthening education and training of marine specialists, supporting applied research in the recovery and use of marine resources, and developing extension and advisory services. The Office carries out these objectives by making grants to selected academic institutions.

The U.S. Lake Survey has two primary missions. It prepares and publishes navigation charts of the Great Lakes and tributary waters and conducts research on a variety of hydraulic and hydrologic phenomena of the Great Lakes' waters. Its activities are very similar to those conducted along the Atlantic and Pacific coasts by ESSA's Coast and Geodetic Survey.

The National Oceanographic Data Center is responsible for the collection and dissemination of oceanographic data accumulated by all Federal agencies.

The National Oceanographic Instrumentation Center provides a central Federal service for the calibration and testing of oceanographic instruments.

The National Data Buoy Development Project was established to determine the feasibility of deploying a system of automatic ocean buoys to obtain oceanic and atmospheric data.

ROLE OF NOAA

Drawing these activities together into a single agency would make possible a balanced Federal program to improve our understanding of the resources of the sea, and permit their development and use while guarding against the sort of thoughtless exploitation that in the past laid waste to so many of our precious natural assets. It would make possible a consolidated program for achieving a more comprehensive understanding of oceanic and atmospheric phenomena, which so greatly affect our lives and activities. It would facilitate the cooperation between public and private interests that can best serve the interests of all.

I expect that NOAA would exercise leadership in developing a national oceanic and atmospheric program of research and development. It would coordinate its own scientific and technical resources with the technical and operational capabilities of other government agencies and private institutions. As important, NOAA would continue to provide those services to other agencies of government, industry and private individuals which have become essential to the efficient operation of our transportation systems, our agriculture and our national security. I expect it to maintain continuing and close liaison with the new Environmental Protection Agency and the Council on Environmental Quality as part of an effort to ensure that environmental questions are dealt with in their totality and they benefit from the full range of the government's technical and human resources.

Authorities who have studied this matter, including the Commission on Marine Science, Engineering and Resources, strongly recommended the creation of a National Advisory Committee for the Oceans. I agree. Consequently, I will request, upon approval of the plan, that the Secretary of Commerce establish a National Advisory Committee for the Oceans and the Atmosphere to advise him on the progress of governmental and private programs in achieving the nation's oceanic and atmospheric objectives.

AN ON-GOING PROCESS

The reorganizations which I am here proposing afford both the Congress and the Executive Branch an opportunity to re-evaluate the adequacy of existing program authorities involved in these consolidations. As these two new organizations come into being, we may well find that supplementary legislation to perfect their authorities will be necessary. I look forward to working with the Congress in this task.

In formulating these reorganization plans, I have been greatly aided by the work of the President's Advisory Council on Executive Organization (the Ash Council), the Commission on Marine Science, Engineering and Resources (the Stratton Commission, appointed by President Johnson), my special task force on oceanography headed by Dr. James Wakelin, and by the information developed during both House and Senate hearings on proposed NOAA legislation.

Many of those who have advised me have proposed additional reorganizations, and it may well be that in the future I shall recommend further changes. For the present, however, I think the two reorganizations transmitted today represent a sound and significant beginning. I also think that in practical terms, in this sensitive and rapidly developing area, it is better to proceed a step at a time—and thus to be sure that we are not caught up in a form of organizational indigestion from trying to rearrange too much at once. As we see how these changes work out, we will gain a better understanding of what further changes—in addition to these—might be desirable.

Ultimately, our objective should be to insure that the nation's environmental and resource protection activities are so organized as to maximize both the effective coordination of all and the effective functioning of each.

The Congress, the Administration and the public all share a profound commitment to the rescue of our natural environment, and the preservation of the Earth as a place both habitable by and hospitable to man. With its acceptance of these reorganization plans, the Congress will help us fulfill that commitment.

RICHARD NIXON.

THE WHITE HOUSE, July 9, 1970.

EX. ORD. NO. 11472. CABINET COMMITTEE ON THE ENVIRONMENT AND CITIZENS' ADVISORY COMMITTEE ON ENVIRONMENTAL QUALITY

Ex. Ord. No. 11472, May 29, 1969, 34 F.R. 8693, as amended by Ex. Ord. No. 11514, Mar. 5, 1970, 35 F.R. 4247; Ex. Ord. No. 12007, Aug. 22, 1977, 42 F.R. 42839, provided:

By virtue of the authority vested in me as President of the United States, it is ordered as follows:

PART I—CABINET COMMITTEE ON THE ENVIRONMENT

SECTION 101. *Establishment of the Cabinet Committee.* (a) There is hereby established the Cabinet Committee on the Environment (hereinafter referred to as "the Cabinet Committee").

(b) The President of the United States shall preside over meetings of the Cabinet Committee. The Vice President shall preside in the absence of the President.

(c) The Cabinet Committee shall be composed of the following members:

The Vice President of the United States
Secretary of Agriculture
Secretary of Commerce
Secretary of Health, Education, and Welfare
Secretary of Housing and Urban Development
Secretary of the Interior
Secretary of Transportation

and such other heads of departments and agencies and others as the President may from time to time direct.

(d) Each member of the Cabinet Committee may designate an alternate, who shall serve as a member of the Cabinet Committee whenever the regular member is unable to attend any meeting of the Cabinet Committee.

(e) When matters which affect the interest of Federal agencies the heads of which are not members of the Cabinet Committee are to be considered by the Cabi-

net Committee, the President or his representative may invite such agency heads or their alternates to participate in the deliberations of the Cabinet Committee.

(f) The Director of the Bureau of the Budget [now the Director of the Office of Management and Budget], the Director of the Office of Science and Technology, the Chairman of the Council of Economic Advisers, and the Executive Secretary of the Council for Urban Affairs or their representatives may participate in the deliberations of the Cabinet Committee on the Environment as observers.

(g) The Chairman of the Council on Environmental Quality (established by Public Law 91-190) [this chapter] shall assist the President in directing the affairs of the Cabinet Committee.

SEC. 102. *Functions of the Cabinet Committee.* (a) The Cabinet Committee shall advise and assist the President with respect to environmental quality matters and shall perform such other related duties as the President may from time to time prescribe. In addition thereto, the Cabinet Committee is directed to:

(1) Recommend measures to ensure that Federal policies and programs, including those for development and conservation of natural resources, take adequate account of environmental effects.

(2) Review the adequacy of existing systems for monitoring and predicting environmental changes so as to achieve effective coverage and efficient use of facilities and other resources.

(3) Foster cooperation between the Federal Government, State and local governments, and private organizations in environmental programs.

(4) Seek advancement of scientific knowledge of changes in the environment and encourage the development of technology to prevent or minimize adverse effects that endanger man's health and well-being.

(5) Stimulate public and private participation in programs and activities to protect against pollution of the Nation's air, water, and land and its living resources.

(6) Encourage timely public disclosure by all levels of government and by private parties of plans that would affect the quality of environment.

(7) Assure assessment of new and changing technologies for their potential effects on the environment.

(8) Facilitate coordination among departments and agencies of the Federal Government in protecting and improving the environment.

(b) The Cabinet Committee shall review plans and actions of Federal agencies affecting outdoor recreation and natural beauty. The Cabinet Committee may conduct studies and make recommendations to the President on matters of policy in the fields of outdoor recreation and natural beauty. In carrying out the foregoing provisions of this subsection, the Cabinet Committee shall, as far as may be practical, advise Federal agencies with respect to the effect of their respective plans and programs on recreation and natural beauty, and may suggest to such agencies ways to accomplish the purposes of this order. For the purposes of this order, plans and programs may include, but are not limited to, those for or affecting: (1) Development, restoration, and preservation of the beauty of the countryside, urban and suburban areas, water resources, wild rivers, scenic roads, parkways and highways, (2) the protection and appropriate management of scenic or primitive areas, natural wonders, historic sites, and recreation areas, (3) the management of Federal land and water resources, including fish and wildlife, to enhance natural beauty and recreational opportunities consistent with other essential uses, (4) cooperation with the States and their local subdivisions and private organizations and individuals in areas of mutual interest, (5) interstate arrangements, including Federal participation where authorized and necessary, and (6) leadership in a nationwide recreation and beautification effort.

SEC. 103. *Coordination.* The Secretary of the Interior may make available to the Cabinet Committee for coordination of outdoor recreation the authorities and resources available to him under the Act of May 28, 1963, 77 Stat. 49 (16 U.S.C. 460*l* et seq.), to the extent permitted by law, he may make such authorities and resources available to the Cabinet Committee also for promoting such coordination of other matters assigned to the Cabinet Committee by this order.

SEC. 104. *Assistance for the Cabinet Committee.* In compliance with provisions of applicable law, and as necessary to serve the purposes of this order, (1) the Council on Environmental Quality (established by Public Law 91-190) [this chapter] shall provide or arrange for necessary administrative and staff services, support, and facilities for the Cabinet Committee, and (2) each department and agency which has membership on the Cabinet Committee under Section 101(c) hereof shall furnish the Cabinet Committee such information and other assistance as may be available.

PART II—CITIZENS' ADVISORY COMMITTEE ON ENVIRONMENTAL QUALITY

[Revoked. Ex. Ord. No. 12007, Aug. 22, 1977, 42 F.R. 42839.]

PART III—GENERAL PROVISIONS

SEC. 301. *Construction.* Nothing in this order shall be construed as subjecting any department, establishment, or other instrumentality of the executive branch of the Federal Government or the head thereof, or any function vested by law in or assigned pursuant to law to any such agency or head, to the authority of any other such agency or head or as abrogating, modifying, or restricting any such function in any manner.

SEC. 302. *Prior bodies and orders.* The President's Council on Recreation and Natural Beauty and the Citizens' Advisory Committee on Recreation and Natural Beauty are hereby terminated and the following are revoked:

(1) Executive Order No. 11278 of May 4, 1966.

(2) Executive Order No. 11359A of June 29, 1967.

(3) Executive Order No. 11402 of March 29, 1968.

TERMINATION OF CABINET COMMITTEE ON THE ENVIRONMENT

The Cabinet Committee on the Environment was terminated and its functions transferred to the Domestic Council, see section 2(b) of Ex. Ord. No. 11541, eff. July 1, 1970, 35 F.R. 10737, set out as a note under section 501 of Title 31, Money and Finance.

The Domestic Council was abolished by Reorg. Plan No. 1 of 1977, § 3, 42 F.R. 56101, 91 Stat. 1633, set out in the Appendix to Title 5, Government Organization and Employees, effective on or before Apr. 1, 1978, at such time as specified by the President. Section 5D of Reorg. Plan No. 1 of 1977 transferred all functions vested in the Domestic Council to the President with power to delegate the performance of such transferred functions within the Executive Office of the President.

TERMINATION OF CITIZENS' ADVISORY COMMITTEE ON ENVIRONMENTAL QUALITY

For provisions relating to termination of Citizens' Advisory Committee on Environmental Quality see Ex. Ord. No. 12007, Aug. 22, 1977, 42 F.R. 42839, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

EX. ORD. NO. 11514. PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY

Ex. Ord. No. 11514, Mar. 5, 1970, 35 F.R. 4247, as amended by Ex. Ord. No. 11991, May 24, 1977, 42 F.R. 26967, provided:

By virtue of the authority vested in me as President of the United States and in furtherance of the purpose and policy of the National Environmental Policy

Act of 1969 (Public Law No. 91-190, approved January 1, 1970) [this chapter], it is ordered as follows:

SECTION 1. *Policy.* The Federal Government shall provide leadership in protecting and enhancing the quality of the Nation's environment to sustain and enrich human life. Federal agencies shall initiate measures needed to direct their policies, plans and programs so as to meet national environmental goals. The Council on Environmental Quality, through the Chairman, shall advise and assist the President in leading this national effort.

SEC. 2. *Responsibilities of Federal agencies.* Consonant with Title I of the National Environmental Policy Act of 1969 [42 U.S.C. 4331 et seq.], hereafter referred to as the "Act", the heads of Federal agencies shall:

(a) Monitor, evaluate, and control on a continuing basis their agencies' activities so as to protect and enhance the quality of the environment. Such activities shall include those directed to controlling pollution and enhancing the environment and those designed to accomplish other program objectives which may affect the quality of the environment. Agencies shall develop programs and measures to protect and enhance environmental quality and shall assess progress in meeting the specific objectives of such activities. Heads of agencies shall consult with appropriate Federal, State and local agencies in carrying out their activities as they affect the quality of the environment.

(b) Develop procedures to ensure the fullest practicable provision of timely public information and understanding of Federal plans and programs with environmental impact in order to obtain the views of interested parties. These procedures shall include, whenever appropriate, provision for public hearings, and shall provide the public with relevant information, including information on alternative courses of action. Federal agencies shall also encourage State and local agencies to adopt similar procedures for informing the public concerning their activities affecting the quality of the environment.

(c) Insure that information regarding existing or potential environmental problems and control methods developed as part of research, development, demonstration, test, or evaluation activities is made available to Federal agencies, States, counties, municipalities, institutions, and other entities, as appropriate.

(d) Review their agencies' statutory authority, administrative regulations, policies, and procedures, including those relating to loans, grants, contracts, leases, licenses, or permits, in order to identify any deficiencies or inconsistencies therein which prohibit or limit full compliance with the purposes and provisions of the Act. A report on this review and the corrective actions taken or planned, including such measures to be proposed to the President as may be necessary to bring their authority and policies into conformance with the intent, purposes, and procedures of the Act, shall be provided to the Council on Environmental Quality not later than September 1, 1970.

(e) Engage in exchange of data and research results, and cooperate with agencies of other governments to foster the purposes of the Act.

(f) Proceed, in coordination with other agencies, with actions required by section 102 of the Act [42 U.S.C. 4332].

(g) In carrying out their responsibilities under the Act and this Order, comply with the regulations issued by the Council except where such compliance would be inconsistent with statutory requirements.

SEC. 3. *Responsibilities of Council on Environmental Quality.* The Council on Environmental Quality shall:

(a) Evaluate existing and proposed policies and activities of the Federal Government directed to the control of pollution and the enhancement of the environment and to the accomplishment of other objectives which affect the quality of the environment. This shall include continuing review of procedures employed in the development and enforcement of Federal standards affecting environmental quality. Based upon such evaluations the Council shall, where appropriate, recommend to the President policies and programs to achieve more effective protection and enhancement of environmental quality and shall, where appropriate, seek resolution of significant environmental issues.

(b) Recommend to the President and to the agencies priorities among programs designed for the control of pollution and for enhancement of the environment.

(c) Determine the need for new policies and programs for dealing with environmental problems not being adequately addressed.

(d) Conduct, as it determines to be appropriate, public hearings or conferences on issues of environmental significance.

(e) Promote the development and use of indices and monitoring systems (1) to assess environmental conditions and trends, (2) to predict the environmental impact of proposed public and private actions, and (3) to determine the effectiveness of programs for protecting and enhancing environmental quality.

(f) Coordinate Federal programs related to environmental quality.

(g) Advise and assist the President and the agencies in achieving international cooperation for dealing with environmental problems, under the foreign policy guidance of the Secretary of State.

(h) Issue regulations to Federal agencies for the implementation of the procedural provisions of the Act (42 U.S.C. 4332(2)). Such regulations shall be developed after consultation with affected agencies and after such public hearings as may be appropriate. They will be designed to make the environmental impact statement process more useful to decisionmakers and the public; and to reduce paperwork and the accumulation of extraneous background data, in order to emphasize the need to focus on real environmental issues and alternatives. They will require impact statements to be concise, clear, and to the point, and supported by evidence that agencies have made the necessary environmental analyses. The Council shall include in its regulations procedures (1) for the early preparation of environmental impact statements, and (2) for the referral to the Council of conflicts between agencies concerning the implementation of the National Environmental Policy Act of 1969, as amended [this chapter], and Section 309 of the Clean Air Act, as amended [42 U.S.C. 7609], for the Council's recommendation as to their prompt resolution.

(i) Issue such other instructions to agencies, and request such reports and other information from them, as may be required to carry out the Council's responsibilities under the Act.

(j) Assist the President in preparing the annual Environmental Quality Report provided for in section 201 of the Act [42 U.S.C. 4341].

(k) Foster investigations, studies, surveys, research, and analyses relating to (i) ecological systems and environmental quality, (ii) the impact of new and changing technologies thereon, and (iii) means of preventing or reducing adverse effects from such technologies.

SEC. 4. *Amendments of E.O. 11472.* Executive Order No. 11472 of May 29, 1969, including the heading thereof, is hereby amended:

(1) By substituting for the term "the Environmental Quality Council", wherever it occurs, the following: "the Cabinet Committee on the Environment".

(2) By substituting for the term "the Council", wherever it occurs, the following: "the Cabinet Committee".

(3) By inserting in subsection (f) of section 101, after "Budget,", the following: "the Director of the Office of Science and Technology,".

(4) By substituting for subsection (g) of section 101 the following:

"(g) The Chairman of the Council on Environmental Quality (established by Public Law 91-190) [this chap-

ter] shall assist the President in directing the affairs of the Cabinet Committee."

(5) By deleting subsection (c) of section 102.

(6) By substituting for "the Office of Science and Technology", in section 104, the following: "the Council on Environmental Quality (established by Public Law 91 190) [this chapter]".

(7) By substituting for "(hereinafter referred to as the 'Committee')", in section 201, the following: "(hereinafter referred to as the 'Citizens' Committee')".

(8) By substituting for the term "the Committee", wherever it occurs, the following: "the Citizens' Committee".

EX. ORD. NO. 11523. NATIONAL INDUSTRIAL POLLUTION CONTROL COUNCIL

Ex. Ord. No. 11523, eff. Apr. 9, 1970, 35 F.R. 5993, provided:

By virtue of the authority vested in me as President of the United States, and in furtherance of the purpose and policy of the National Environmental Policy Act of 1969 (Public Law 91-190, approved January 1, 1970) [this chapter], it is ordered as follows:

SECTION 1. *Establishment of the Council.* (a) There is hereby established the National Industrial Pollution Control Council (hereinafter referred to as "the Industrial Council") which shall be composed of a Chairman, a Vice-chairman, and other representatives of business and industry appointed by the Secretary of Commerce (hereinafter referred to as "the Secretary").

(b) The Secretary, with the concurrence of the Chairman, shall appoint an Executive Director of the Industrial Council.

SEC. 2. *Functions of the Industrial Council.* The Industrial Council shall advise the President and the Chairman of the Council on Environmental Quality, through the Secretary, on programs of industry relating to the quality of the environment. In particular, the Industrial Council may—

(1) Survey and evaluate the plans and actions of industry in the field of environmental quality.

(2) Identify and examine problems of the effects on the environment of industrial practices and the needs of industry for improvements in the quality of the environment, and recommend solutions to those problems.

(3) Provide liaison among members of the business and industrial community on environmental quality matters.

(4) Encourage the business and industrial community to improve the quality of the environment.

(5) Advise on plans and actions of Federal, State, and local agencies involving environmental quality policies affecting industry which are referred to it by the Secretary, or by the Chairman of the Council on Environmental Quality through the Secretary.

SEC. 3. *Subordinate Committees.* The Industrial Council may establish, with the concurrence of the Secretary, such subordinate committees as it may deem appropriate to assist in the performance of its functions. Each subordinate committee shall be headed by a chairman appointed by the Chairman of the Industrial Council with the concurrence of the Secretary.

SEC. 4. *Assistance for the Industrial Council.* In compliance with applicable law, and as necessary to serve the purposes of this order, the Secretary shall provide or arrange for administrative and staff services, support, and facilities for the Industrial Council and any of its subordinate committees.

SEC. 5. *Expenses.* Members of the Industrial Council or any of its subordinate committees shall receive no compensation from the United States by reason of their services hereunder, but may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 5703) for persons in the Government service employed intermittently.

SEC. 6. *Regulations.* The provisions of Executive Order No. 11007 of February 26, 1962 (3 CFR 573) [see 5 U.S.C. 901 note] prescribing regulations for the formation and use of advisory committees, are hereby made applicable to the Industrial Council and each of its subordinate committees. The Secretary may exercise the discretionary powers set forth in that order.

SEC. 7. *Construction.* Nothing in this order shall be construed as subjecting any Federal agency, or any function vested by law in, or assigned pursuant to law to, any Federal agency to the authority of any other Federal agency or of the Industrial Council or of any of its subordinate committees, or as abrogating or restricting any such function in any manner.

RICHARD NIXON.

EXECUTIVE ORDER NO. 11574

Ex. Ord. No. 11574, eff. Dec. 23, 1970, 35 F.R. 19627, set out as a note under section 407 of Title 33, Navigation and Navigable Waters, provides for the administration of the Refuse Act permit program to regulate the discharge of pollutants and other refuse matter into the navigable waters of the United States or their tributaries.

EXECUTIVE ORDER NO. 11643

Ex. Ord. No. 11643, eff. Feb. 8, 1972, 37 F.R. 2875, as amended by Ex. Ord. No. 11870, eff. July 18, 1975, 40 F.R. 30611; Ex. Ord. No. 11917, eff. May 28, 1976, 41 F.R. 22239, which related to environmental safeguards on activities for animal damage control on Federal lands, was revoked by Ex. Ord. No. 12342, Jan. 27, 1982, 47 F.R. 4223.

EX. ORD. NO. 11644. USE OF OFF-ROAD VEHICLES ON PUBLIC LANDS

Ex. Ord. No. 11644, Feb. 8, 1972, 37 F.R. 2877, as amended by Ex. Ord. No. 11989, May 24, 1977, 42 F.R. 26959, provided:

An estimated 5 million off-road recreational vehicles—motorcycles, minibikes, trail bikes, snowmobiles, dunebuggies, all-terrain vehicles, and others—are in use in the United States today, and their popularity continues to increase rapidly. The widespread use of such vehicles on the public lands—often for legitimate purposes but also in frequent conflict with wise land and resource management practices, environmental values, and other types of recreational activity—has demonstrated the need for a unified Federal policy toward the use of such vehicles on the public lands.

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States by the Constitution of the United States and in furtherance of the purpose and policy of the National Environmental Policy Act of 1969 (42 U.S.C. 4321), it is hereby ordered as follows:

SECTION 1. *Purpose.* It is the purpose of this order to establish policies and provide for procedures that will ensure that the use of off-road vehicles on public lands will be controlled and directed so as to protect the resources of those lands, to promote the safety of all users of those lands, and to minimize conflicts among the various uses of those lands.

SEC. 2. *Definitions.* As used in this order, the term:

(1) "public lands" means (A) all lands under the custody and control of the Secretary of the Interior and the Secretary of Agriculture, except Indian lands, (B) lands under the custody and control of the Tennessee Valley Authority that are situated in western Kentucky and Tennessee and are designated as "Land Between the Lakes," and (C) lands under the custody and control of the Secretary of Defense;

(2) "respective agency head" means the Secretary of the Interior, the Secretary of Defense, the Secretary of Agriculture, and the Board of Directors of the Tennessee Valley Authority, with respect to public lands under the custody and control of each;

(3) "off-road vehicle" means any motorized vehicle designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh,

sagebrush, or other natural terrain; except that such term excludes (A) any registered motorboat, (B) any fire, military, emergency or law enforcement vehicle when used for emergency purposes, and any combat or combat support vehicle when used for national defense purposes, and (C) any vehicle whose use is expressly authorized by the respective agency head under a permit, lease, license, or contract; and

(4) "official use" means use by an employee, agent, or designated representative of the Federal Government or one of its contractors in the course of his employment, agency, or representation.

SEC. 3. *Zones of Use.* (a) Each respective agency head shall develop and issue regulations and administrative instructions, within six months of the date of this order, to provide for administrative designation of the specific areas and trails on public lands on which the use of off-road vehicles may be permitted, and areas in which the use of off-road vehicles may not be permitted, and set a date by which such designation of all public lands shall be completed. Those regulations shall direct that the designation of such areas and trails will be based upon the protection of the resources of the public lands, promotion of the safety of all users of those lands, and minimization of conflicts among the various uses of those lands. The regulations shall further require that the designation of such areas and trails shall be in accordance with the following—

(1) Areas and trails shall be located to minimize damage to soil, watershed, vegetation, or other resources of the public lands.

(2) Areas and trails shall be located to minimize harassment of wildlife or significant disruption of wildlife habitats.

(3) Areas and trails shall be located to minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands, and to ensure the compatibility of such uses with existing conditions in populated areas, taking into account noise and other factors.

(4) Areas and trails shall not be located in officially designated Wilderness Areas or Primitive Areas. Areas and trails shall be located in areas of the National Park system, Natural Areas, or National Wildlife Refuges and Game Ranges only if the respective agency head determines that off-road vehicle use in such locations will not adversely affect their natural, aesthetic, or scenic values.

(b) The respective agency head shall ensure adequate opportunity for public participation in the promulgation of such regulations and in the designation of areas and trails under this section.

(c) The limitations on off-road vehicle use imposed under this section shall not apply to official use.

SEC. 4. *Operating Conditions.* Each respective agency head shall develop and publish, within one year of the date of this order, regulations prescribing operating conditions for off-road vehicles on the public lands. These regulations shall be directed at protecting resource values, preserving public health, safety, and welfare, and minimizing use conflicts.

SEC. 5. *Public Information.* The respective agency head shall ensure that areas and trails where off-road vehicle use is permitted are well marked and shall provide for the publication and distribution of information, including maps, describing such areas and trails and explaining the conditions on vehicle use. He shall seek cooperation of relevant State agencies in the dissemination of this information.

SEC. 6. *Enforcement.* The respective agency head shall, where authorized by law, prescribe appropriate penalties for violation of regulations adopted pursuant to this order, and shall establish procedures for the enforcement of those regulations. To the extent permitted by law, he may enter into agreements with State or local governmental agencies for cooperative enforcement of laws and regulations relating to off-road vehicle use.

SEC. 7. *Consultation.* Before issuing the regulations or administrative instructions required by this order or designating areas or trails are required by this order and those regulations and administrative instructions, the Secretary of the Interior shall, as appropriate, consult with the Atomic Energy Commission.

SEC. 8. *Monitoring of Effects and Review.* (a) The respective agency head shall monitor the effects of the use of off-road vehicles on lands under their jurisdictions. On the basis of the information gathered, they shall from time to time amend or rescind designation of areas or other actions taken pursuant to this order as necessary to further the policy of this order.

(b) The Council on Environmental Quality shall maintain a continuing review of the implementation of this order.

SEC. 9. *Special Protection of the Public Lands.* (a) Notwithstanding the provisions of Section 3 of this Order, the respective agency head shall, whenever he determines that the use of off-road vehicles will cause or is causing considerable adverse effects on the soil, vegetation, wildlife, wildlife habitat or cultural or historic resources of particular areas or trails of the public lands, immediately close such areas or trails to the type of off-road vehicle causing such effects, until such time as he determines that such adverse effects have been eliminated and that measures have been implemented to prevent future recurrence.

(b) Each respective agency head is authorized to adopt the policy that portions of the public lands within his jurisdiction shall be closed to use by off-road vehicles except those areas or trails which are suitable and specifically designated as open to such use pursuant to Section 3 of this Order.

EX. ORD. NO. 11987. EXOTIC ORGANISMS

Ex. Ord. No. 11987, May 24, 1977, 42 F.R. 26949, provided:

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in furtherance of the purposes and policies of the Lacey Act (18 U.S.C. 42) and the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), it is hereby ordered as follows:

SECTION 1. As used in this Order:

(a) "United States" means all of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands.

(b) "Introduction" means the release, escape, or establishment of an exotic species into a natural ecosystem.

(c) "Exotic species" means all species of plants and animals not naturally occurring, either presently or historically, in any ecosystem of the United States.

(d) "Native species" means all species of plants and animals naturally occurring, either presently or historically, in any ecosystem of the United States.

SEC. 2. (a) Executive agencies shall, to the extent permitted by law, restrict the introduction of exotic species into the natural ecosystems on lands and waters which they own, lease, or hold for purposes of administration; and, shall encourage the States, local governments, and private citizens to prevent the introduction of exotic species into natural ecosystems of the United States.

(b) Executive agencies, to the extent they have been authorized by statute to restrict the importation of exotic species, shall restrict the introduction of exotic species into any natural ecosystem of the United States.

(c) Executive agencies shall, to the extent permitted by law, restrict the use of Federal funds, programs, or authorities used to export native species for the purpose of introducing such species into ecosystems outside the United States where they do not naturally occur.

(d) This Order does not apply to the introduction of any exotic species, or the export of any native species,

if the Secretary of Agriculture or the Secretary of the Interior finds that such introduction or exportation will not have an adverse effect on natural ecosystems.

SEC. 3. The Secretary of the Interior, in consultation with the Secretary of Agriculture and the heads of other appropriate agencies, shall develop and implement, by rule or regulation, a system to standardize and simplify the requirements, procedures and other activities appropriate for implementing the provisions of this Order. The Secretary of the Interior shall ensure that such rules or regulations are in accord with the performance by other agencies of those functions vested by law, including this Order, in such agencies.

JIMMY CARTER.

EX. ORD. NO. 11988. FLOODPLAIN MANAGEMENT

Ex. Ord. No. 11988, May 24, 1977, 42 F.R. 26951, as amended by Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, provided:

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in furtherance of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001 et seq.), and the Flood Disaster Protection Act of 1973 (Public Law 93-234, 87 Stat. 975) [see Short Title of 1973 Amendment note set out under 42 U.S.C. 4001], in order to avoid to the extent possible the long and short term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative, it is hereby ordered as follows:

SECTION 1. Each agency shall provide leadership and shall take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains in carrying out its responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities.

SEC. 2. In carrying out the activities described in Section 1 of this Order, each agency has a responsibility to evaluate the potential effects of any actions it may take in a floodplain; to ensure that its planning programs and budget requests reflect consideration of flood hazards and floodplain management; and to prescribe procedures to implement the policies and requirements of this Order, as follows:

(a)(1) Before taking an action, each agency shall determine whether the proposed action will occur in a floodplain—for major Federal actions significantly affecting the quality of the human environment, the evaluation required below will be included in any statement prepared under Section 102(2)(C) of the National Environmental Policy Act [42 U.S.C. 4332(2)(C)]. This determination shall be made according to a Department of Housing and Urban Development (HUD) floodplain map or a more detailed map of an area, if available. If such maps are not available, the agency shall make a determination of the location of the floodplain based on the best available information. The Water Resources Council shall issue guidance on this information not later than October 1, 1977.

(2) If an agency has determined to, or proposes to, conduct, support, or allow an action to be located in a floodplain, the agency shall consider alternatives to avoid adverse effects and incompatible development in the floodplains. If the head of the agency finds that the only practicable alternative consistent with the law and with the policy set forth in this Order requires siting in a floodplain, the agency shall, prior to taking action, (i) design or modify its action in order to minimize potential harm to or within the floodplain, consistent with regulations issued in accord with Section 2(d) of this Order, and (ii) prepare and circulate a notice containing an explanation of why the action is proposed to be located in the floodplain.

(3) For programs subject to the Office of Management and Budget Circular A-95, the agency shall send the notice, not to exceed three pages in length including a location map, to the state and areawide A-95 clearinghouses for the geographic areas affected. The notice shall include: (i) the reasons why the action is proposed to be located in a floodplain; (ii) a statement indicating whether the action conforms to applicable state or local floodplain protection standards and (iii) a list of the alternatives considered. Agencies shall endeavor to allow a brief comment period prior to taking any action.

(4) Each agency shall also provide opportunity for early public review of any plans or proposals for actions in floodplains, in accordance with Section 2(b) of Executive Order No. 11514, as amended [set out as a note above], including the development of procedures to accomplish this objective for Federal actions whose impact is not significant enough to require the preparation of an environmental impact statement under Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended [42 U.S.C. 4332(2)(C)].

(b) Any requests for new authorizations or appropriations transmitted to the Office of Management and Budget shall indicate, if an action to be proposed will be located in a floodplain, whether the proposed action is in accord with this Order.

(c) Each agency shall take floodplain management into account when formulating or evaluating any water and land use plans and shall require land and water resources use appropriate to the degree of hazard involved. Agencies shall include adequate provision for the evaluation and consideration of flood hazards in the regulations and operating procedures for the licenses, permits, loan or grants-in-aid programs that they administer. Agencies shall also encourage and provide appropriate guidance to applicants to evaluate the effects of their proposals in floodplains prior to submitting applications for Federal licenses, permits, loans or grants.

(d) As allowed by law, each agency shall issue or amend existing regulations and procedures within one year to comply with this Order. These procedures shall incorporate the Unified National Program for Floodplain Management of the Water Resources Council, and shall explain the means that the agency will employ to pursue the nonhazardous use of riverine, coastal and other floodplains in connection with the activities under its authority. To the extent possible, existing processes, such as those of the Council on Environmental Quality and the Water Resources Council, shall be utilized to fulfill the requirements of this Order. Agencies shall prepare their procedures in consultation with the Water Resources Council, the Director of the Federal Emergency Management Agency, and the Council on Environmental Quality, and shall update such procedures as necessary.

SEC. 3. In addition to the requirements of Section 2, agencies with responsibilities for Federal real property and facilities shall take the following measures:

(a) The regulations and procedures established under Section 2(d) of this Order shall, at a minimum, require the construction of Federal structures and facilities to be in accordance with the standards and criteria and to be consistent with the intent of those promulgated under the National Flood Insurance Program. They shall deviate only to the extent that the standards of the Flood Insurance Program are demonstrably inappropriate for a given type of structure or facility.

(b) If, after compliance with the requirements of this Order, new construction of structures or facilities are to be located in a floodplain, accepted floodproof-

...s and other flood protection measures shall be applied to new construction or rehabilitation. To achieve flood protection, agencies shall, wherever practicable, elevate structures above the base flood level rather than filling in land.

(c) If property used by the general public has suffered flood damage or is located in an identified flood hazard area, the responsible agency shall provide on structures, and other places where appropriate, conspicuous delineation of past and probable flood height in order to enhance public awareness of and knowledge about flood hazards.

(d) When property in floodplains is proposed for lease, easement, right-of-way, or disposal to non-Federal public or private parties, the Federal agency shall (1) reference in the conveyance those uses that are restricted under identified Federal, State or local floodplain regulations; and (2) attach other appropriate restrictions to the uses of properties by the grantee or purchaser and any successors, except where prohibited by law, or (3) withhold such properties from conveyance.

SEC. 4. In addition to any responsibilities under this Order and Sections 202 and 205 of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4106 and 4128), agencies which guarantee, approve, regulate, or insure any financial transaction which is related to an area located in a floodplain shall, prior to completing action on such transaction, inform any private parties participating in the transaction of the hazards of locating structures in the floodplain.

SEC. 5. The head of each agency shall submit a report to the Council on Environmental Quality and to the Water Resources Council on June 30, 1978, regarding the status of their procedures and the impact of this Order on the agency's operations. Thereafter, the Water Resources Council shall periodically evaluate agency procedures and their effectiveness.

SEC. 6. As used in this Order:

(a) The term "agency" shall have the same meaning as the term "Executive agency" in Section 105 of Title 5 of the United States Code and shall include the military departments; the directives contained in this Order, however, are meant to apply only to those agencies which perform the activities described in Section 1 which are located in or affecting floodplains.

(b) The term "base flood" shall mean that flood which has a one percent or greater chance of occurrence in any given year.

(c) The term "floodplain" shall mean the lowland and relatively flat areas adjoining inland and coastal waters including floodprone areas of offshore islands, including at a minimum, that area subject to a one percent or greater chance of flooding in any given year.

SEC. 7. Executive Order No. 11296 of August 10, 1966, is hereby revoked. All actions, procedures, and issuances taken under that Order and still in effect shall remain in effect until modified by appropriate authority under the terms of this Order.

SEC. 8. Nothing in this Order shall apply to assistance provided for emergency work essential to save lives and protect property and public health and safety, performed pursuant to Sections 305 and 306 of the Disaster Relief Act of 1974 (88 Stat. 148, 42 U.S.C. 5145 and 5146).

SEC. 9. To the extent the provisions of Section 2(a) of this Order are applicable to projects covered by Section 104(h) of the Housing and Community Development Act of 1974, as amended (88 Stat. 640, 42 U.S.C. 5304(h)), the responsibilities under those provisions may be assumed by the appropriate applicant, if the applicant has also assumed, with respect to such projects, all of the responsibilities for environmental review, decisionmaking, and action pursuant to the National Environmental Policy Act of 1969, as amended [42 U.S.C. 4321].

JIMMY CARTER.

EX. ORD. NO. 11990. PROTECTION OF WETLANDS

Ex. Ord. No. 11990, May 24, 1977, 42 F.R. 26961, provided:

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in furtherance of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), in order to avoid to the extent possible the long and short term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative, it is hereby ordered as follows:

SECTION 1. (a) Each agency shall provide leadership and shall take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; and (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities.

(b) This Order does not apply to the issuance by Federal agencies of permits, licenses, or allocations to private parties for activities involving wetlands on non-Federal property.

SEC. 2. (a) In furtherance of Section 101(b)(3) of the National Environmental Policy Act of 1969 (42 U.S.C. 4331(b)(3)) to improve and coordinate Federal plans, functions, programs and resources to the end that the Nation may attain the widest range of beneficial uses of the environment without degradation and risk to health or safety, each agency, to the extent permitted by law, shall avoid undertaking or providing assistance for new construction located in wetlands unless the head of the agency finds (1) that there is no practicable alternative to such construction, and (2) that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use. In making this finding the head of the agency may take into account economic, environmental and other pertinent factors.

(b) Each agency shall also provide opportunity for early public review of any plans or proposals for new construction in wetlands, in accordance with Section 2(b) of Executive Order No. 11514, as amended [set out as a note above], including the development of procedures to accomplish this objective for Federal actions whose impact is not significant enough to require the preparation of an environmental impact statement under Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended [42 U.S.C. 4332(2)(C)].

SEC. 3. Any requests for new authorizations or appropriations transmitted to the Office of Management and Budget shall indicate, if an action to be proposed will be located in wetlands, whether the proposed action is in accord with this Order.

SEC. 4. When Federally-owned wetlands or portions of wetlands are proposed for lease, easement, right-of-way or disposal to non-Federal public or private parties, the Federal agency shall (a) reference in the conveyance those uses that are restricted under identified Federal, State or local wetlands regulations; and (b) attach other appropriate restrictions to the uses of properties by the grantee or purchaser and any successor, except where prohibited by law; or (c) withhold such properties from disposal.

SEC. 5. In carrying out the activities described in Section 1 of this Order, each agency shall consider factors relevant to a proposal's effect on the survival and quality of the wetlands. Among these factors are:

(a) public health, safety, and welfare, including water supply, quality, recharge and discharge, pollu-

1-403. The plan shall be submitted in accordance with any other instructions that the Director of the Office of Management and Budget may issue.

1-5. Funding

1-501. The head of each Executive agency shall ensure that sufficient funds for compliance with applicable pollution control standards are requested in the agency budget.

1-502. The head of each Executive agency shall ensure that funds appropriated and apportioned for the prevention, control and abatement of environmental pollution are not used for any other purpose unless permitted by law and specifically approved by the Office of Management and Budget.

1-6. Compliance With Pollution Controls

1-601. Whenever the Administrator or the appropriate State, interstate, or local agency notifies an Executive agency that it is in violation of an applicable pollution control standard (see Section 1-102 of this Order), the Executive agency shall promptly consult with the notifying agency and provide for its approval a plan to achieve and maintain compliance with the applicable pollution control standard. This plan shall include an implementation schedule for coming into compliance as soon as practicable.

1-602. The Administrator shall make every effort to resolve conflicts regarding such violation between Executive agencies and, on request of any party, such conflicts between an Executive agency and a State, interstate, or a local agency. If the Administrator cannot resolve a conflict, the Administrator shall request the Director of the Office of Management and Budget to resolve the conflict.

1-603. The Director of the Office of Management and Budget shall consider unresolved conflicts at the request of the Administrator. The Director shall seek the Administrator's technological judgment and determination with regard to the applicability of statues and regulations.

1-604. These conflict resolution procedures are in addition to, not in lieu of, other procedures, including sanctions, for the enforcement of applicable pollution control standards.

1-605. Except as expressly provided by a Presidential exemption under this Order, nothing in this Order, nor any action or inaction under this Order, shall be construed to revise or modify any applicable pollution control standard.

1-7. Limitation on Exemptions

1-701. Exemptions from applicable pollution control standards may only be granted under statues cited in Section 1-102(a) through 1-102(f) if the President makes the required appropriate statutory determination: that such exemption is necessary (a) in the interest of national security, or (b) in the paramount interest of the United States.

1-702. The head of an Executive agency may, from time to time, recommend to the President through the Director of the Office of Management and Budget, that an activity or facility, or uses thereof, be exempt from an applicable pollution control standard.

1-703. The Administrator shall advise the President, through the Director of the Office of Management and Budget, whether he agrees or disagrees with a recommendation for exemption and his reasons therefor.

1-704. The Director of the Office of Management and Budget must advise the President within sixty days of receipt of the Administrator's views.

1-8. General Provisions

1-801. The head of each Executive agency that is responsible for the construction or operation of Federal facilities outside the United States shall ensure that such construction or operation complies with the environmental pollution control standards of general applicability in the host country or jurisdiction.

1-802. Executive Order No. 11752 of December 17, 1973, is revoked.

Jimmy Carter.

Ex. Ord. No. 12114. Environmental Effects Abroad of Major Federal Actions

Ex. Ord. No. 12114, Jan. 4, 1979, 44 F.R. 1957, provided:

By virtue of the authority vested in me by the Constitution and the laws of the United States, and as President of the United States, in order to further environmental objectives consistent with the foreign policy and national security policy of the United States, it is ordered as follows:

Section 1

1-1. *Purpose and Scope.* The purpose of this Executive Order is to enable responsible officials of Federal agencies having ultimate responsibility for authorizing and approving actions encompassed by this Order to be informed of pertinent environmental considerations and to take such considerations into account, with other pertinent considerations of national policy, in making decisions regarding such actions. While based on independent authority, this Order furthers the purpose of the National Environmental Policy Act [42 U.S.C. 4321 et seq.] and the Marine Protection Research and Sanctuaries Act [16 U.S.C. 1431 et seq. and 33 U.S.C. 1401 et seq.] and the Deepwater Port Act [33 U.S.C. 1501 et seq.] consistent with the foreign policy and national security policy of the United States, and represents the United States government's exclusive and complete determination of the procedural and other actions to be taken by Federal agencies to further the purpose of the National Environmental Policy Act, with respect to the environment outside the United States, its territories and possessions.

Section 2

2-1. *Agency Procedures.* Every Federal agency taking major Federal actions encompassed hereby and not exempted herefrom having significant effects on the environment outside the geographical borders of the United States and its territories and possessions shall within eight months after the effective date of this Order have in effect procedures to implement this Order. Agencies shall consult with the Department of State and the Council on Environmental Quality concerning such procedures prior to placing them in effect.

2-2. *Information Exchange.* To assist in effectuating the foregoing purpose, the Department of State and the Council on Environmental Quality in collaboration with other interested Federal agencies and other nations shall conduct a program for exchange on a continuing basis of information concerning the environment. The objectives of this program shall be to provide information for use by decisionmakers, to heighten awareness of and interest in environmental concerns and, as appropriate, to facilitate environmental cooperation with foreign nations.

2-3. *Actions Included.* Agencies in their procedures under Section 2-1 shall establish procedures by which their officers having ultimate responsibility for authorizing and approving actions in one of the following categories encompassed by this Order, take into consideration in making decisions concerning such actions, a document described in Section 2-4(a):

(a) major Federal actions significantly affecting the environment of the global commons outside the jurisdiction of any nation (e.g., the oceans or Antarctica);

(b) major Federal actions significantly affecting the environment of a foreign nation not participating with the United States and not otherwise involved in the action;

(c) major Federal actions significantly affecting the environment of a foreign nation which provide to that nation:

tion; flood and storm hazards; and sediment and erosion;

(b) maintenance of natural systems, including conservation and long term productivity of existing flora and fauna, species and habitat diversity and stability, hydrologic utility, fish, wildlife, timber, and food and fiber resources; and

(c) other uses of wetlands in the public interest, including recreational, scientific, and cultural uses.

SEC. 6. As allowed by law, agencies shall issue or amend their existing procedures in order to comply with this Order. To the extent possible, existing processes, such as those of the Council on Environmental Quality and the Water Resources Council, shall be utilized to fulfill the requirements of this Order.

SEC. 7. As used in this Order:

(a) The term "agency" shall have the same meaning as the term "Executive agency" in Section 105 of Title 5 of the United States Code and shall include the military departments; the directives contained in this Order, however, are meant to apply only to those agencies which perform the activities described in Section 1 which are located in or affecting wetlands.

(b) The term "new construction" shall include draining, dredging, channelizing, filling, diking, impounding, and related activities and any structures or facilities begun or authorized after the effective date of this Order.

(c) The term "wetlands" means those areas that are inundated by surface or ground water with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds.

SEC. 8. This Order does not apply to projects presently under construction, or to projects for which all of the funds have been appropriated through Fiscal Year 1977, or to projects and programs for which a draft or final environmental impact statement will be filed prior to October 1, 1977. The provisions of Section 2 of this Order shall be implemented by each agency not later than October 1, 1977.

SEC. 9. Nothing in this Order shall apply to assistance provided for emergency work, essential to save lives and protect property and public health and safety, performed pursuant to Sections 305 and 306 of the Disaster Relief Act of 1974 (88 Stat. 148, 42 U.S.C. 5145 and 5146).

SEC. 10. To the extent the provisions of Sections 2 and 5 of this Order are applicable to projects covered by Section 104(h) of the Housing and Community Development Act of 1974, as amended (88 Stat. 640, 42 U.S.C. 5304(h)), the responsibilities under those provisions may be assumed by the appropriate applicant, if the applicant has also assumed, with respect to such projects, all of the responsibilities for environmental review, decisionmaking, and action pursuant to the National Environmental Policy Act of 1969, as amended [42 U.S.C. 4321 et seq.].

JIMMY CARTER.

EX. ORD. NO. 12088. FEDERAL COMPLIANCE WITH POLLUTION CONTROL STANDARDS

Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, provided:

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 22 of the Toxic Substances Control Act (15 U.S.C. 2621), Section 313 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1323), Section 1447 of the Public Health Service Act, as amended by the Safe Drinking Water Act (42 U.S.C. 300j-6), Section 118 of the Clean Air Act, as amended (42 U.S.C. 7418(b)), Section 4 of the Noise Control Act of 1972 (42 U.S.C. 4903), Section 6001 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6961), and Section 301 of Title 3 of the United States Code, and to ensure Federal compliance with applicable pollution control standards, it is hereby ordered as follows:

1-1. APPLICABILITY OF POLLUTION CONTROL STANDARDS

1-101. The head of each Executive agency is responsible for ensuring that all necessary actions are taken for the prevention, control, and abatement of environmental pollution with respect to Federal facilities and activities under the control of the agency.

1-102. The head of each Executive agency is responsible for compliance with applicable pollution control standards, including those established pursuant to but not limited to, the following:

(a) Toxic Substances Control Act (15 U.S.C. 2601 et seq.).

(b) Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.).

(c) Public Health Service Act, as amended by the Safe Drinking Water Act (42 U.S.C. 300f et seq.).

(d) Clean Air Act, as amended (42 U.S.C. 7401 et seq.).

(e) Noise Control Act of 1972 (42 U.S.C. 4901 et seq.).

(f) Solid Waste Disposal Act, as amended (42 U.S.C. 6901 et seq.).

(g) Radiation guidance pursuant to Section 274(h) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021(h)); see also, the Radiation Protection Guidance to Federal Agencies for Diagnostic X Rays approved by the President on January 26, 1978 and published at page 4377 of the Federal Register on February 1, 1978).

(h) Marine Protection, Research, and Sanctuaries Act of 1972, as amended (33 U.S.C. 1401, 1402, 1411-1421, 1441-1444 and 16 U.S.C. 1431-1434).

(i) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 et seq.).

1-103. "Applicable pollution control standards" means the same substantive, procedural, and other requirements that would apply to a private person.

1-2. AGENCY COORDINATION

1-201. Each Executive agency shall cooperate with the Administrator of the Environmental Protection Agency, hereinafter referred to as the Administrator, and State, interstate, and local agencies in the prevention, control, and abatement of environmental pollution.

1-202. Each Executive agency shall consult with the Administrator and with State, interstate, and local agencies concerning the best techniques and methods available for the prevention, control, and abatement of environmental pollution.

1-3. TECHNICAL ADVICE AND OVERSIGHT

1-301. The Administrator shall provide technical advice and assistance to Executive agencies in order to ensure their cost effective and timely compliance with applicable pollution control standards.

1-302. The administrator shall conduct such reviews and inspections as may be necessary to monitor compliance with applicable pollution control standards by Federal facilities and activities.

1-4. POLLUTION CONTROL PLAN

1-401. Each Executive agency shall submit to the Director of the Office of Management and Budget, through the Administrator, an annual plan for the control of environmental pollution. The plan shall provide for any necessary improvement in the design, construction, management, operation, and maintenance of Federal facilities and activities, and shall include annual cost estimates. The Administrator shall establish guidelines for developing such plans.

1-402. In preparing its plan, each Executive agency shall ensure that the plan provides for compliance with all applicable pollution control standards.

sections 791, 1116, title 49 App. section 1431; title 50 App. sections 2095, 2096.

§ 4333. Conformity of administrative procedures to national environmental policy

All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this chapter and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this chapter.

(Pub. L. 91-190, title I, § 103, Jan. 1, 1970, 83 Stat. 854.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4334 of this title.

§ 4334. Other statutory obligations of agencies

Nothing in section 4332 or 4333 of this title shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency.

(Pub. L. 91-190, title I, § 104, Jan. 1, 1970, 83 Stat. 854.)

§ 4335. Efforts supplemental to existing authorizations

The policies and goals set forth in this chapter are supplementary to those set forth in existing authorizations of Federal agencies.

(Pub. L. 91-190, title I, § 105, Jan. 1, 1970, 83 Stat. 854.)

SUBCHAPTER II—COUNCIL ON ENVIRONMENTAL QUALITY

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 4332 of this title.

§ 4341. Reports to Congress; recommendations for legislation

The President shall transmit to the Congress annually beginning July 1, 1970, an Environmental Quality Report (hereinafter referred to as the "report") which shall set forth (1) the status and condition of the major natural, manmade, or altered environmental classes of the Nation, including, but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environment, including, but not limited to, the forest, dryland, wetland, range, urban, suburban, and rural environment; (2) current and foreseeable trends in the quality, management and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the Nation; (3) the adequacy of available natural resources for fulfilling human and economic requirements of the Nation in the light of expected population pressures; (4) a review of the programs and activities (including regulatory activities) of the Federal Government, the State and local governments, and nongovernmental entities or individuals, with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and (5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.

(Pub. L. 91-190, title II, § 201, Jan. 1, 1970, 83 Stat. 854.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4344, 5910 of this title.

§ 4342. Establishment; membership; Chairman; appointments

There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the "Council"). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in the light of the policy set forth in subchapter I of this chapter; to be conscious of and responsive to the scientific, economic, social, esthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment.

(Pub. L. 91-190, title II, § 202, Jan. 1, 1970, 83 Stat. 854.)

§ 4343. Employment of personnel, experts and consultants

(a) The Council may employ such officers and employees as may be necessary to carry out its functions under this chapter. In addition, the Council may employ and fix the compensation of such experts and consultants as may be necessary for the carrying out of its functions under this chapter, in accordance with section 3109 of title 5 (but without regard to the last sentence thereof).

(b) Notwithstanding section 1342 of title 31, the Council may accept and employ voluntary and uncompensated services in furtherance of the purposes of the Council.

(Pub. L. 91-190, title II, § 203, Jan. 1, 1970, 83 Stat. 855; Pub. L. 94-52, § 2, July 3, 1975, 89 Stat. 258.)

CODIFICATION

In subsec. (b), "section 1342 of title 31" was substituted for "section 3679(b) of the Revised Statutes (31

§ 4332. Cooperation of agencies; reports; availability of information; recommendations; international and national coordination of efforts

The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this chapter, and (2) all agencies of the Federal Government shall—

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisonmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by subchapter II of this chapter, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, and shall accompany the proposal through the existing agency review processes;

(D) Any detailed statement required under subparagraph (C) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or official, if:

(i) the State agency or official has statewide jurisdiction and has the responsibility for such action,

(ii) the responsible Federal official furnishes guidance and participates in such preparation,

(iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption, and

(iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this chapter; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction. [1]

(E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(F) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(G) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(H) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(I) assist the Council on Environmental Quality established by subchapter II of this chapter.

(Pub. L. 91-190, title I, § 102, Jan. 1, 1970, 83 Stat. 853; Pub. L. 94-83, Aug. 9, 1975, 89 Stat. 424.)

AMENDMENTS

1975—Subpar. (D). Pub. L. 94-83 added subpar. (D). Former subpar. (D) redesignated (E).

Subpars. (E) to (I). Pub. L. 94-83 redesignated former subpars. (D) to (H) as (E) to (I), respectively.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2242, 4334, 6239, 6508, 7153, 7609, 8473, 8775, 9117, 10132, 10133, 10134, 10141, 10155, 10161, 10196, 10197 of this title; title 15 section 793; title 16 sections 410hh, 1379, 1536, 1604, 3120, 3149, 3232; title 25 sections 2103, 2104; title 30 sections 185, 1147, 1292, 1419; title 33 section 1504; title 43 sections 1331, 1344, 1751, 2005, 2006; title 45

[1] So in original. The period probably should be a semicolon.

(1) a product, or physical project producing a principal product or an emission or effluent, which is prohibited or strictly regulated by Federal law in the United States because its toxic effects on the environment create a serious public health risk; or

(2) a physical project which in the United States is prohibited or strictly regulated by Federal law to protect the environment against radioactive substances.

(d) major Federal actions outside the United States, its territories and possessions which significantly affect natural or ecological resources of global importance designated for protection under this subsection by the President, or, in the case of such a resource protected by international agreement binding on the United States, by the Secretary of State. Recommendations to the President under this subsection shall be accompanied by the views of the Council on Environmental Quality and the Secretary of State.

2-4. *Applicable Procedures.* (a) There are the following types of documents to be used in connection with actions described in Section 2-3:

(i) environmental impact statements (including generic, program and specific statements);

(ii) bilateral or multilateral environmental studies, relevant or related to the proposed action, by the United States and one [or more] more foreign nations, or by an international body or organization in which the United States is a member or participant; or

(iii) concise reviews of the environmental issues involved, including environmental assessments, summary environmental analyses or other appropriate documents.

(b) Agencies shall in their procedures provide for preparation of documents described in Section 2-4(a), with respect to actions described in Section 2-3, as follows:

(i) for effects described in Section 2-3(a), an environmental impact statement described in Section 2-4(a)(i);

(ii) for effects described in Section 2-3(b), a document described in Section 2-4(a)(ii) or (iii), as determined by the agency;

(iii) for effects described in Section 2-3(c), a document described in Section 2-4(a)(ii) or (iii), as determined by the agency;

(iv) for effects described in Section 2-3(d), a document described in Section 2-4(a)(i), (ii) or (iii), as determined by the agency.

Such procedures may provide that an agency need not prepare a new document when a document described in Section 2 4(a) already exists.

(c) Nothing in this Order shall serve to invalidate any existing regulations of any agency which have been adopted pursuant to court order or pursuant to judicial settlement of any case or to prevent any agency from providing in its procedures for measures in addition to those provided for herein to further the purpose of the National Environmental Policy Act [43 U.S.C. 4321 et seq.] and other environmental laws, including the Marine Protection Research and Sanctuaries Act [16 U.S.C. 1431 et seq. and 33 U.S.C. 1401 et seq.], and the Deepwater Port Act [33 U.S.C. 1501 et seq.], consistent with the foreign and national security policies of the United States.

(d) Except as provided in Section 2-5(b), agencies taking action encompassed by this Order shall, as soon as feasible, inform other Federal agencies with relevant expertise of the availability of environmental documents prepared under this Order.

Agencies in their procedures under Section 2-1 shall make appropriate provision for determining when an affected nation shall be informed in accordance with Section 3-2 of this Order of the availability of environmental documents prepared pursuant to those procedures.

In order to avoid duplication of resources, agencies in their procedures shall provide for appropriate utilization of the resources of other Federal agencies with relevant environmental jurisdiction or expertise.

2-5. *Exemptions and Considerations.* (a) Notwithstanding Section 2-3, the following actions are exempt from this Order:

(i) actions not having a significant effect on the environment outside the United States as determined by the agency;

(ii) actions taken by the President;

(iii) actions taken by or pursuant to the direction of the President or Cabinet officer when the national security or interest is involved or when the action occurs in the course of an armed conflict;

(iv) intelligence activities and arms transfers;

(v) export licenses or permits or export approvals, and actions relating to nuclear activities except actions providing to a foreign nation a nuclear production or utilization facility as defined in the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.], as amended, or a nuclear waste management facility;

(vi) votes and other actions in international conferences and organizations;

(vii) disaster and emergency relief action.

(b) Agency procedures under Section 2-1 implementing Section 2-4 may provide for appropriate modifications in the contents, timing and availability of documents to other affected Federal agencies and affected nations, where necessary to:

(i) enable the agency to decide and act promptly as and when required;

(ii) avoid adverse impacts on foreign relations or infringement in fact or appearance of other nations' sovereign responsibilities, or

(iii) ensure appropriate reflection of:

(1) diplomatic factors;

(2) international commercial, competitive and export promotion factors;

(3) needs for governmental or commercial confidentiality;

(4) national security considerations;

(5) difficulties of obtaining information and agency ability to analyze meaningfully environmental effects of a proposed action; and

(6) the degree to which the agency is involved in or able to affect a decision to be made.

(c) Agency procedure under Section 2-1 may provide for categorical exclusions and for such exemptions in addition to those specified in subsection (a) of this Section as may be necessary to meet emergency circumstances, situations involving exceptional foreign policy and national security sensitivities and other such special circumstances. In utilizing such additional exemptions agencies shall, as soon as feasible, consult with the Department of State and the Council on Environmental Quality.

(d) The provisions of Section 2-5 do not apply to actions described in Section 2-3(a) unless permitted by law.

SECTION 3.

3-1. *Rights of Action.* This Order is solely for the purpose of establishing internal procedures for Federal agencies to consider the significant effects of their actions on the environment outside the United States, its territories and possessions, and nothing in this Order shall be construed to create a cause of action.

3-2. *Foreign Relations.* The Department of State shall coordinate all communications by agencies with foreign governments concerning environmental agreements and other arrangements in implementation of this Order.

3-3. *Multi-Agency Actions.* Where more than one Federal agency is involved in an action or program, a lead agency, as determined by the agencies involved, shall have responsibility for implementation of this Order.

3-4. *Certain Terms.* For purposes of this Order, "environment" means the natural and physical environment and excludes social, economic and other environments; and an action significantly affects the environment if it does significant harm to the environment

even though on balance the agency believes the action to be beneficial to the environment. The term "export approvals" in Section 2-5(a)(v) does not mean or include direct loans to finance exports.

3-5. *Multiple Impacts.* If a major Federal action having effects on the environment of the United States or the global commons requires preparation of an environmental impact statement, and if the action also has effects on the environment of a foreign nation, an environmental impact statement need not be prepared with respect to the effects on the environment of the foreign nation.

JIMMY CARTER.

EXECUTIVE ORDER NO. 12194

Ex. Ord. No. 12194, Feb. 21, 1980, 45 F.R. 12209, which established the Radiation Policy Council and provided for its membership, functions, etc., was revoked by Ex. Ord. No. 12379, § 23, Aug. 17, 1982, 47 F.R. 36100, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

SUBCHAPTER I—POLICIES AND GOALS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 4342, 4344 of this title.

§ 4331. Congressional declaration of national environmental policy

(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this chapter, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may—

(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

(Pub. L. 91-190, title I, § 101, Jan. 1, 1970, 83 Stat. 852.)

COMMISSION ON POPULATION GROWTH AND THE AMERICAN FUTURE

Pub. L. 91-213, §§ 1 to 9, Mar. 16, 1970, 84 Stat. 67-69, established the Commission on Population Growth and the American Future to conduct and sponsor such studies and research and make such recommendations as might be necessary to provide information and education to all levels of government in the United States, and to our people regarding a broad range of problems associated with population growth and their implications for America's future; prescribed the composition of the Commission, provided for the appointment of its members, and the designation of a Chairman and Vice Chairman; required a majority of the members of the Commission to constitute a quorum, but allowed a lesser number to conduct hearings; prescribed the compensation of members of the Commission; required the Commission to conduct an inquiry into certain prescribed aspects of population growth in the United States and its foreseeable social consequences; provided for the appointment of an Executive Director and other personnel and prescribed their compensation; authorized the Commission to enter into contracts with public agencies, private firms, institutions, and individuals for the conduct of research and surveys, the preparation of reports, and other activities necessary to the discharge of its duties, and to request from any Federal department or agency any information and assistance it deems necessary to carry out its functions; required the General Services Administration to provide administrative services for the Commission on a reimbursable basis; required the Commission to submit an interim report to the President and the Congress one year after it was established and to submit its final report two years after Mar. 16, 1970; terminated the Commission sixty days after the date of the submission of its final report; and authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such amounts as might be necessary to carry out the provisions of Pub. L. 91-213.

EXECUTIVE ORDER NO. 11507

Ex. Ord. No. 11507, eff. Feb. 4, 1970, 35 F.R. 2573, which related to prevention, control, and abatement of air and water pollution at federal facilities was superseded by Ex. Ord. No. 11752, eff. Dec. 17, 1973, 38 F.R. 34793, formerly set out as a note below.

EXECUTIVE ORDER NO. 11752

Ex. Ord. No. 11752, Dec. 17, 1973, 38 F.R. 34793, which related to the prevention, control, and abatement of environmental pollution at Federal facilities, was revoked by Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, set out as a note under section 4321 of this title.

U.S.C. 665(b))" on authority of Pub. L. 97-258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1975—Pub. L. 94-52 designated existing provisions as subsec. (a) and added subsec. (b).

§ 4344. Duties and functions

It shall be the duty and function of the Council—

(1) to assist and advise the President in the preparation of the Environmental Quality Report required by section 4341 of this title;

(2) to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in subchapter I of this chapter, and to compile and submit to the President studies relating to such conditions and trends;

(3) to review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in subchapter I of this chapter for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto;

(4) to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;

(5) to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

(6) to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(7) to report at least once each year to the President on the state and condition of the environment; and

(8) to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request.

(Pub. L. 91-190, title II, § 204, Jan. 1, 1970, 83 Stat. 855.)

TRANSFER OF FUNCTIONS

So much of the functions of the Council on Environmental Quality under par. (4) of this section as pertains to ecological systems was transferred to the Administrator of the Environmental Protection Agency by Reorg. Plan No. 3 of 1970, § 2(a)(5), eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat. 2086, set out under section 4321 of this title.

§ 4345. Consultation with the Citizens' Advisory Committee on Environmental Quality and other representatives

In exercising its powers, functions, and duties under this chapter, the Council shall—

(1) consult with the Citizens' Advisory Committee on Environmental Quality established by Executive Order numbered 11472, dated May 29, 1969, and with such representatives of science, industry, agriculture, labor, conservation organizations, State and local governments and other groups, as it deems advisable; and

(2) utilize, to the fullest extent possible, the services, facilities, and information (including statistical information) of public and private agencies and organizations, and individuals, in order that duplication of effort and expense may be avoided, thus assuring that the Council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

(Pub. L. 91-190, title II, § 205, Jan. 1, 1970, 83 Stat. 855.)

REFERENCES IN TEXT

Executive Order numbered 11472, dated May 29, 1969, referred to in par. (1), is set out as a note under section 4321 of this title.

CITIZENS' ADVISORY COMMITTEE ON ENVIRONMENTAL QUALITY

For provisions relating to termination of Citizens' Advisory Committee on Environmental Quality, see Ex. Ord. No. 12007, Aug. 22, 1977, 42 F.R. 42839, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

§ 4346. Tenure and compensation of members

Members of the Council shall serve full time and the Chairman of the Council shall be compensated at the rate provided for Level II of the Executive Schedule Pay Rates (5 U.S.C. 5313). The other members of the Council shall be compensated at the rate provided for Level IV or [1] the Executive Schedule Pay Rates (5 U.S.C. 5315).

(Pub. L. 91-190, title II, § 206, Jan. 1, 1970, 83 Stat. 856.)

§ 4346a. Travel reimbursement by private organizations and Federal, State, and local governments

The Council may accept reimbursements from any private nonprofit organization or from any department, agency, or instrumentality of the Federal Government, any State, or local government, for the reasonable travel expenses incurred by an officer or employee of the Council in connection with his attendance at any conference, seminar, or similar meeting conducted for the benefit of the Council.

(Pub. L. 91-190, title II, § 207, as added Pub. L. 94-52, § 3, July 3, 1975, 89 Stat. 258.)

[1] So in original. Probably should be "of".

§ 4346b. Expenditures in support of international activities

The Council may make expenditures in support of its international activities, including expenditures for: (1) international travel; (2) activities in implementation of international agreements; and (3) the support of international exchange programs in the United States and in foreign countries.

(Pub. L. 91-190, title II, § 208, as added Pub. L. 94-52, § 3, July 3, 1975, 89 Stat. 258.)

§ 4347. Authorization of appropriations

There are authorized to be appropriated to carry out the provisions of this chapter not to exceed $300,000 for fiscal year 1970, $700,000 for fiscal year 1971, and $1,000,000 for each fiscal year thereafter.

(Pub. L. 91-190, title II, § 209, formerly § 207, Jan. 1, 1970, 83 Stat. 856, renumbered Pub. L. 94-52, § 3, July 3, 1975, 89 Stat. 258.)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976
43 U.S.C. 1701, P.L. 94-579, 90 STAT. 2744

CHAPTER 35—FEDERAL LAND POLICY AND MANAGEMENT

SUBCHAPTER I—GENERAL PROVISIONS

§ 1701. Congressional declaration of policy

(a) The Congress declares that it is the policy of the United States that—

(1) the public lands be retained in Federal ownership, unless as a result of the land use planning procedure provided for in this Act, it is determined that disposal of a particular parcel will serve the national interest;

(2) the national interest will be best realized if the public lands and their resources are periodically and systematically inventoried and their present and future use is projected through a land use planning process coordinated with other Federal and State planning efforts;

(3) public lands not previously designated for any specific use and all existing classifications of public lands that were effected by executive action or statute before October 21, 1976, be reviewed in accordance with the provisions of this Act;

(4) the Congress exercise its constitutional authority to withdraw or otherwise designate or dedicate Federal lands for specified purposes and that Congress delineate the extent to which the Executive may withdraw lands without legislative action;

(5) in administering public land statutes and exercising discretionary authority granted by them, the Secretary be required to establish comprehensive rules and regulations after considering the views of the general public; and to structure adjudication procedures to assure adequate third party participation, objective administrative review of initial decisions, and expeditious decisionmaking;

(6) judicial review of public land adjudication decisions be provided by law;

(7) goals and objectives be established by law as guidelines for public land use planning, and that management be on the basis of multiple use and sustained yield unless otherwise specified by law;

(8) the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use;

(9) the United States receive fair market value of the use of the public lands and their resources unless otherwise provided for by statute;

(10) uniform procedures for any disposal of public land, acquisition of non-Federal land for public purposes, and the exchange of such lands be established by statute, requiring each disposal, acquisition, and exchange to be consistent with the prescribed mission of the department or agency involved, and reserving to the Congress review of disposals in excess of a specified acreage;

(11) regulations and plans for the protection of public land areas of critical environmental concern be promptly developed;

(12) the public lands be managed in a manner which recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands including implementation of the Mining and Minerals Policy Act of 1970 (84 Stat. 1876, 30 U.S.C. 21a) as it pertains to the public lands; and

(13) the Federal Government should, on a basis equitable to both the Federal and local taxpayer, provide for payments to compensate States and local governments for burdens created as a result of the immunity of Federal lands from State and local taxation.

(b) The policies of this Act shall become effective only as specific statutory authority for their implementation is enacted by this Act or by subsequent legislation and shall then be construed as supplemental to and not in derogation of the purposes for which public lands are administered under other provisions of law.

(Pub. L. 94-579, title I, § 102, Oct. 21, 1976, 90 Stat. 2744.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (a)(1), (3) and (b), is Pub. L. 94-579, Oct. 21, 1976, 90 Stat. 2743, as amended, known as the Federal Land Policy and Management Act of 1976. For complete classification of this Act to the Code, see Tables.

The Mining and Minerals Policy Act of 1970, referred to in subsec. (a)(12), is Pub. L. 91-631, Dec. 31, 1970, 84 Stat. 1876, which is classified to section 21a of Title 30, Mineral Lands and Mining.

SHORT TITLE

Section 101 of Pub. L. 94-579 provided that: "This Act [enacting this chapter and amending and repealing numerous other laws, which for complete classification, see Tables] may be cited as the 'Federal Land Policy and Management Act of 1976'."

SAVINGS PROVISIONS

Section 701 of Pub. L. 94-579 provided that:

"(a) Nothing in this Act, or in any amendment made by this Act [see Short Title note set out above], shall be construed as terminating any valid lease, permit, patent, right-of-way, or other land use right or authorization existing on the date of approval of this Act [Oct. 21, 1976].

"(b) Notwithstanding any provision of this Act, in the event of conflict with or inconsistency between this Act and the Acts of August 28, 1937 (50 Stat. 874; 43 U.S.C. 1181a-1181j) and May 24, 1939 (53 Stat. 753), insofar as they relate to management of timber resources, and disposition of revenues from lands and resources, the latter Acts shall prevail.

"(c) All withdrawals, reservations, classifications, and designations in effect as of the date of approval of this Act shall remain in full force and effect until modified under the provisions of this Act or other applicable law.

"(d) Nothing in this Act, or in any amendments made by this Act, shall be construed as permitting any person to place, or allow to be placed, spent oil shale, overburden, or byproducts from the recovery of other minerals found with oil shale, on any Federal land other than Federal land which has been leased for the recovery of shale oil under the Act of February 25, 1920 (41 Stat. 437, as amended; 30 U.S.C. 181 et seq.).

"(e) Nothing in this Act shall be construed as modifying, revoking, or changing any provision of the Alaska Native Claims Settlement Act (85 Stat. 688, as amended; 43 U.S.C. 1601 et seq.).

"(f) Nothing in this Act shall be deemed to repeal any existing law by implication.

"(g) Nothing in this Act shall be construed as limiting or restricting the power and authority of the United States or—

"(1) as affecting in any way any law governing appropriation or use of, or Federal right to, water on public lands;

"(2) as expanding or diminishing Federal or State jurisdiction, responsibility, interests, or rights in water resources development or control;

"(3) as displacing, superseding, limiting, or modifying any interstate compact or the jurisdiction or responsibility of any legally established joint or common agency of two or more States or of two or more States and the Federal Government;

"(4) as superseding, modifying, or repealing, except as specifically set forth in this Act, existing laws applicable to the various Federal agencies which are authorized to develop or participate in the development of water resources or to exercise licensing or regulatory functions in relation thereto;

"(5) as modifying the terms of any interstate compact;

"(6) as a limitation upon any State criminal statute or upon the police power of the respective States, or as derogating the authority of a local police officer in the performance of his duties, or as depriving any State or political subdivision thereof of any right it may have to exercise civil and criminal jurisdiction on the national resource lands; or as amending, limiting, or infringing the existing laws providing grants of lands to the States.

"(h) All actions by the Secretary concerned under this Act shall be subject to valid existing rights.

"(i) The adequacy of reports required by this Act to be submitted to the Congress or its committees shall not be subject to judicial review.

"(j) Nothing in this Act shall be construed as affecting the distribution of livestock grazing revenues to local governments under the Granger-Thye Act (64 Stat. 85, 16 U.S.C. 580h), under the Act of May 23, 1908 (35 Stat. 260, as amended; 16 U.S.C. 500), under the Act of March 4, 1913 (37 Stat. 843, as amended; 16 U.S.C. 501), and under the Act of June 20, 1910 (36 Stat. 557)."

SEVERABILITY OF PROVISIONS

Section 707 of Pub. L. 94-579 provided that: "If any provision of this Act [see Short Title note set out above] or the application thereof is held invalid, the remainder of the Act and the application thereof shall not be affected thereby."

EXISTING RIGHTS-OF-WAY

Section 706(b) of Pub. L. 94-579 provided that: "Nothing in section 706(a) [see Tables for classification], except as it pertains to rights-of-way, may be construed as affecting the authority of the Secretary of Agriculture under the Act of June 4, 1897 (30 Stat. 35, as amended, 16 U.S.C. 551); the Act of July 22, 1937 (50 Stat. 525, as amended, 7 U.S.C. 1010-1212); or the Act of September 3, 1954 (68 Stat. 1146, 43 U.S.C. 931c)."

§ 1702. Definitions

Without altering in any way the meaning of the following terms as used in any other statute, whether or not such statute is referred to in, or amended by, this Act, as used in this Act—

(a) The term "areas of critical environmental concern" means areas within the public lands where special management attention is required (when such areas are developed or used or where no development is required) to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards.

(b) The term "holder" means any State or local governmental entity, individual, partnership, corporation, association, or other business entity receiving or using a right-of-way under subchapter V of this chapter.

(c) The term "multiple use" means the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.

(d) The term "public involvement" means the opportunity for participation by affected citizens in rulemaking, decisionmaking, and planning with respect to the public lands, including public meetings or hearings held at locations near the affected lands, or advisory mechanisms, or such other procedures as may be necessary to provide public comment in a particular instance.

(e) The term "public lands" means any land and interest in land owned by the United States within the several States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership, except—

(1) lands located on the Outer Continental Shelf; and

(2) lands held for the benefit of Indians, Aleuts, and Eskimos.

(f) The term "right-of-way" includes an easement, lease, permit, or license to occupy, use, or traverse public lands granted for the purpose listed in subchapter V of this chapter.

(g) The term "Secretary", unless specifically designated otherwise, means the Secretary of the Interior.

(h) The term "sustained yield" means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the public lands consistent with multiple use.

(i) The term "wilderness" as used in section 1782 of this title shall have the same meaning as it does in section 1131(c) of title 16.

(j) The term "withdrawal" means withholding an area of Federal land from settlement, sale, location, or entry, under some or all of the general land laws, for the purpose of limiting activities under those laws in order to maintain other public values in the area or reserving the area for a particular public purpose or program; or transferring jurisdiction over an area of Federal land, other than "property" governed by the Federal Property and Administrative Services Act, as amended (40 U.S.C. 472) from one department, bureau or agency to another department, bureau or agency.

(k) An "allotment management plan" means a document prepared in consultation with the lessees or permittees involved, which applies to livestock operations on the public lands or on lands within National Forests in the eleven contiguous Western States and which:

(1) prescribes the manner in, and extent to, which livestock operations will be conducted in order to meet the multiple-use, sustained-yield, economic and other needs and objectives as determined for the lands by the Secretary concerned; and

(2) describes the type, location, ownership, and general specifications for the range improvements to be installed and maintained on the lands to meet the livestock grazing and other objectives of land management; and

(3) contains such other provisions relating to livestock grazing and other objectives found by the Secretary concerned to be consistent with the provisions of this Act and other applicable law.

(l) The term "principal or major uses" includes, and is limited to, domestic livestock grazing, fish and wildlife development and utilization, mineral exploration and production, rights-of-way, outdoor recreation, and timber production.

(m) The term "department" means a unit of the executive branch of the Federal Government which is headed by a member of the President's Cabinet and the term "agency" means a unit of the executive branch of the Federal Government which is not under the jurisdiction of a head of a department.

(n) The term "Bureau means the Bureau of Land Management.

(o) The term "eleven contiguous Western States" means the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

(p) The term "grazing permit and lease" means any document authorizing use of public lands or lands in National Forests in the eleven contiguous western States for the purpose of grazing domestic livestock.

(Pub. L. 94-579, title I, § 103, Oct. 21, 1976, 90 Stat. 2745.)

REFERENCES IN TEXT

This Act, referred to in the opening par. and in subsec. (k), is Pub. L. 94-579, Oct. 21, 1976, 90 Stat. 2743, as amended, known as the Federal Land Policy and Management Act of 1976. For complete classification of this Act to the Code, see Tables.

The general land laws, referred to in subsec. (j), are classified generally to this title.

The Federal Property and Administrative Services Act, referred to in subsec. (j), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended, known as the Federal Property and Administrative Services Act of 1949, as amended. Provisions of that Act relating to management and disposal of property are classified to chapter 10 (§ 471 et seq.) of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 471 of Title 40 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1331, 1783, 1902 of this title; title 16 sections 410ii-3, 410ii-5.

SUBCHAPTER II—LAND USE PLANNING AND LAND ACQUISITION AND DISPOSITION

§ 1711. Continuing inventory and identification of public lands; preparation and maintenance

(a) The Secretary shall prepare and maintain on a continuing basis an inventory of all public lands and their resource and other values (including, but not limited to, outdoor recreation and scenic values), giving priority to areas of critical environmental concern. This inventory shall be kept current so as to reflect changes in conditions and to identify new and emerging resource and other values. The preparation and maintenance of such inventory or the identification of such areas shall not, of itself, change or prevent change of the management or use of public lands.

(b) As funds and manpower are made available, the Secretary shall ascertain the boundaries of the public lands; provide means of public identification thereof including, where appropriate, signs and maps; and provide State and local governments with data from the inventory for the purpose of planning and regulating the uses of non-Federal lands in proximity of such public lands.

(Pub. L. 94-579, title II, § 201, Oct. 21, 1976, 90 Stat. 2747.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1782, 1784, 1901, 1903 of this title.

§ 1712. Land use plans

(a) Development, maintenance, and revision by Secretary

The Secretary shall, with public involvement and consistent with the terms and conditions of this Act, develop, maintain, and, when appropriate, revise land use plans which provide by tracts or areas for the use of the public lands. Land use plans shall be developed for the public lands regardless of whether such lands previously have been classified, withdrawn, set aside, or otherwise designated for one or more uses.

(b) Coordination of plans for National Forest System lands with Indian land use planning and management programs for purposes of development and revision

In the development and revision of land use plans, the Secretary of Agriculture shall coordinate land use plans for lands in the National Forest System with the land use planning and management programs of and for Indian tribes by, among other things, considering the policies of approved tribal land resource management programs.

(c) Criteria for development and revision

In the development and revision of land use plans, the Secretary shall—

(1) use and observe the principles of multiple use and sustained yield set forth in this and other applicable law;

(2) use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences;

(3) give priority to the designation and protection of areas of critical environmental concern;

(4) rely, to the extent it is available, on the inventory of the public lands, their resources, and other values;

(5) consider present and potential uses of the public lands;

(6) consider the relative scarcity of the values involved and the availability of alternative means (including recycling) and sites for realization of those values;

(7) weigh long-term benefits to the public against short-term benefits;

(8) provide for compliance with applicable pollution control laws, including State and Federal air, water, noise, or other pollution standards or implementation plans; and

(9) to the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of other Federal departments and agencies and of the States and local governments within which the lands are located, including, but not limited to, the statewide outdoor recreation plans developed under the Act of September 3, 1964 (78 Stat. 897), as amended [16 U.S.C. 460*l*-4 et seq.], and of or for Indian tribes by, among other things, considering the policies of approved State and tribal land resource management programs. In implementing this directive, the Secretary shall, to the extent he finds practical, keep apprised of State, local, and tribal land use plans; assure that consideration is given to those State, local, and tribal plans that are germane in the development of land use plans for public lands; assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans, and shall provide for meaningful public involvement of State and local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands, including early public notice of proposed decisions which may have a significant impact on non-Federal lands. Such officials in each State are authorized to furnish advice to the Secretary with respect to the development and revision of land use plans, land use guidelines, land use rules, and land use regulations for the public lands within such State and with respect to such other land use matters as may be referred to them by him. Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act.

(d) Review and inclusion of classified public lands; review of existing land use plans; modification and termination of classifications

Any classification of public lands or any land use plan in effect on October 21, 1976, is subject to review in the land use planning process conducted under this section, and all public lands, regardless of classification, are subject to inclusion in any land use plan developed pursuant to this section. The Secretary may modify or terminate any such classification consistent with such land use plans.

(e) Management decisions for implementation of developed or revised plans

The Secretary may issue management decisions to implement land use plans developed or revised under this section in accordance with the following:

(1) Such decisions, including but not limited to exclusions (that is, total elimination) of one or more of the principal or major uses made by a management decision shall remain subject to reconsideration, modification, and termination through revision by the Secretary or his delegate, under the provisions of this section, of the land use plan involved.

(2) Any management decision or action pursuant to a management decision that excludes (that is, totally eliminates) one or more of the principal or major uses for two or more years with respect to a tract of land of one hundred thousand acres or more shall be reported by the Secretary to the House of Representatives and the Senate. If within ninety days from the giving of such notice (exclusive of days on which either House has adjourned for more than three consecutive days), the Congress adopts a concurrent resolution of nonapproval of the management decision or action, then the management decision or action shall be promptly terminated

by the Secretary. If the committee to which a resolution has been referred during the said ninety day period, has not reported it at the end of thirty calendar days after its referral, it shall be in order to either discharge the committee from further consideration of such resolution or to discharge the committee from consideration of any other resolution with respect to the management decision or action. A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported such a resolution), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to. If the motion to discharge is agreed to or disagreed to, the motion may not be made with respect to any other resolution with respect to the same management decision or action. When the committee has reprinted, or has been discharged from further consideration of a resolution, it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(3) Withdrawals made pursuant to section 1714 of this title may be used in carrying out management decisions, but public lands shall be removed from or restored to the operation of the Mining Law of 1872, as amended (R.S. 2318-2352; 30 U.S.C. 21 et seq.) or transferred to another department, bureau, or agency only by withdrawal action pursuant to section 1714 of this title or other action pursuant to applicable law: *Provided*, That nothing in this section shall prevent a wholly owned Government corporation from acquiring and holding rights as a citizen under the Mining Law of 1872.

(f) Procedures applicable to formulation of plans and programs for public land management

The Secretary shall allow an opportunity for public involvement and by regulation shall establish procedures, including public hearings where appropriate, to give Federal, State, and local governments and the public, adequate notice and opportunity to comment upon and participate in the formulation of plans and programs relating to the management of the public lands.

(Pub. L. 94-579, title II, § 202, Oct. 21, 1976, 90 Stat. 2747.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (a) and (c)(9), is Pub. L. 94-579, Oct. 21, 1976, 90 Stat. 2743, as amended, known as the Federal Land Policy and Management Act of 1976. For complete classification of this Act to the Code, see Tables.

The Act of September 3, 1964 (78 Stat. 897), as amended, referred to in subsec. (c)(9), is Pub. L. 88-578, Sept. 3, 1964, 78 Stat. 897, as amended, known as the Land and Water Conservation Fund Act of 1965, which is classified generally to part B (§ 460*l*-4 et seq.) of subchapter LXIX of chapter 1 of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 460*l*-4 of Title 16 and Tables.

The Mining Law of 1872, as amended, referred to in subsec. (e)(3), is act May 10, 1872, ch. 152, 17 Stat. 91, as amended, which was incorporated into the Revised Statutes of 1878 as R.S. §§ 2319 to 2328, 2331, 2333 to 2337, and 2344, which are classified to sections 22 to 24, 26 to 28, 29, 30, 33 to 35, 37, 39 to 42, and 47 of Title 30, Mineral Lands and Mining. For complete classification of R.S. §§ 2318-2352, see Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1713, 1732, 1752, 1781, 1783, 1784, 1901, 1903, 1904 of this title; title 16 section 1333; title 42 section 6508.

§ 1713. Sales of public land tracts

(a) Criteria for disposal; excepted lands

A tract of the public lands (except land in units of the National Wilderness Preservation System, National Wild and Scenic Rivers Systems, and National System of Trails) may be sold under this Act where, as a result of land use planning required under section 1712 of this title, the Secretary determines that the sale of such tract meets the following disposal criteria:

(1) such tract because of its location or other characteristics is difficult and uneconomic to manage as part of the public lands, and is not suitable for management by another Federal department or agency; or

(2) such tract was acquired for a specific purpose and the tract is no longer required for that or any other Federal purpose; or

(3) disposal of such tract will serve important public objectives, including but not limited to, expansion of communities and economic development, which cannot be achieved prudently or feasibly on land other than public land and which outweigh other public objectives and values, including, but not limited to, recreation and scenic values, which would be served by maintaining such tract in Federal ownership.

(b) Conveyance of land of agricultural value and desert in character

Where the Secretary determines that land to be conveyed under clause (3) of subsection (a) of this section is of agricultural value and is desert in character, such land shall be conveyed either under the sale authority of this section or in accordance with other existing law.

(c) Congressional approval procedures applicable to tracts in excess of two thousand five hundred acres

Where a tract of the public lands in excess of two thousand five hundred acres has been designated for sale, such sale may be made only after the end of the ninety days (not counting days on which the House of Representatives or the Senate has adjourned for more than three consecutive days) beginning on the day the Sec-

retary has submitted notice of such designation to the Senate and the House of Representatives, and then only if the Congress has not adopted a concurrent resolution stating that such House does not approve of such designation. If the committee to which a resolution has been referred during the said ninety day period, has not reported it at the end of thirty calendar days after its referral, it shall be in order to either discharge the committee from further consideration of such resolution or to discharge the committee from consideration of any other resolution with respect to the designation. A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported such a resolution), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to. If the motion to discharge is agreed to or disagreed to, the motion may not be made with respect to any other resolution with respect to the same designation. When the committee has reprinted, or has been discharged from further consideration of a resolution, it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(d) Sale price

Sales of public lands shall be made at a price not less than their fair market value as determined by the Secretary.

(e) Maximum size of tracts

The Secretary shall determine and establish the size of tracts of public lands to be sold on the basis of the land use capabilities and development requirements of the lands; and, where any such tract which is judged by the Secretary to be chiefly valuable for agriculture is sold, its size shall be no larger than necessary to support a family-sized farm.

(f) Competitive bidding requirements

Sales of public lands under this section shall be conducted under competitive bidding procedures to be established by the Secretary. However, where the Secretary determines it necessary and proper in order (1) to assure equitable distribution among purchasers of lands, or (2) to recognize equitable considerations or public policies, including but not limited to, a preference to users, he may sell those lands with modified competitive bidding or without competitive bidding. In recognizing public policies, the Secretary shall give consideration to the following potential purchasers:

(1) the State in which the land is located;

(2) the local government entities in such State which are in the vicinity of the land;

(3) adjoining landowners;

(4) individuals; and

(5) any other person.

(g) Acceptance or rejection of offers to purchase

The Secretary shall accept or reject, in writing, any offer to purchase made through competitive bidding at his invitation no later than thirty days after the receipt of such offer or, in the case of a tract in excess of two thousand five hundred acres, at the end of thirty days after the end of the ninety-day period provided in subsection (c) of this section, whichever is later, unless the offeror waives his right to a decision within such thirty-day period. Prior to the expiration of such periods the Secretary may refuse to accept any offer or may withdraw any land or interest in land from sale under this section when he determines that consummation of the sale would not be consistent with this Act or other applicable law.

(Pub. L. 94-579, title II, § 203, Oct. 21, 1976, 90 Stat. 2750.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (a) and (g), is Pub. L. 94-579, Oct. 21, 1976, 90 Stat. 2743, as amended, known as the Federal Land Policy and Management Act of 1976. For complete classification of this Act to the Code, see Tables.

§ 1714. Withdrawals of lands

(a) Authorization and limitation; delegation of authority

On and after the effective date of this Act the Secretary is authorized to make, modify, extend, or revoke withdrawals but only in accordance with the provisions and limitations of this section. The Secretary may delegate this withdrawal authority only to individuals in the Office of the Secretary who have been appointed by the President, by and with the advice and consent of the Senate.

(b) Application and procedures applicable subsequent to submission of application

(1) Within thirty days of receipt of an application for withdrawal, and whenever he proposes a withdrawal on his own motion, the Secretary shall publish a notice in the Federal Register stating that the application has been submitted for filing or the proposal has been made and the extent to which the land is to be segregated while the application is being considered by the Secretary. Upon publication of such notice the land shall be segregated from the operation of the public land laws to the extent specified in the notice. The segregative effect of the application shall terminate upon (a) rejection of the application by the Secretary, (b) withdrawal of lands by the Secretary, or (c) the expiration of two years from the date of the notice.

(2) The publication provisions of this subsection are not applicable to withdrawals under subsection (e) hereof.

(c) Congressional approval procedures applicable to withdrawals aggregating five thousand acres or more

(1) On and after October 21, 1976, a withdrawal aggregating five thousand acres or more may be made (or such a withdrawal or any other withdrawal involving in the aggregate five thousand acres or more which terminates after such date of approval may be extended) only for a period of not more than twenty years by the Secretary on his own motion or upon request by a department or agency head. The Secretary shall notify both Houses of Congress of such a withdrawal no later than its effective date and the withdrawal shall terminate and become ineffective at the end of ninety days (not counting days on which the Senate or the House of Representatives has adjourned for more than three consecutive days) beginning on the day notice of such withdrawal has been submitted to the Senate and the House of Representatives, if the Congress has adopted a concurrent resolution stating that such House does not approve the withdrawal. If the committee to which a resolution has been referred during the said ninety day period, has not reported it at the end of thirty calendar days after its referral, it shall be in order to either discharge the committee from further consideration of such resolution or to discharge the committee from consideration of any other resolution with respect to the Presidential recommendation. A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported such a resolution), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to. If the motion to discharge is agreed to or disagreed to, the motion may not be made with respect to any other resolution with respect to the same Presidential recommendation. When the committee has reprinted, or has been discharged from further consideration of a resolution, it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(2) With the notices required by subsection (c)(1) of this section and within three months after filing the notice under subsection (e) of this section, the Secretary shall furnish to the committees—

(1) a clear explanation of the proposed use of the land involved which led to the withdrawal;

(2) an inventory and evaluation of the current natural resource uses and values of the site and adjacent public and nonpublic land and how it appears they will be affected by the proposed use, including particularly aspects of use that might cause degradation of the environment, and also the economic impact of the change in use on individuals, local communities, and the Nation;

(3) an identification of present users of the land involved, and how they will be affected by the proposed use;

(4) an analysis of the manner in which existing and potential resource uses are incompatible with or in conflict with the proposed use, together with a statement of the provisions to be made for continuation or termination of existing uses, including an economic analysis of such continuation or termination;

(5) an analysis of the manner in which such lands will be used in relation to the specific requirements for the proposed use;

(6) a statement as to whether any suitable alternative sites are available (including cost estimates) for the proposed use or for uses such a withdrawal would displace;

(7) a statement of the consultation which has been or will be had with other Federal departments and agencies, with regional, State, and local government bodies, and with other appropriate individuals and groups;

(8) a statement indicating the effect of the proposed uses, if any, on State and local government interests and the regional economy;

(9) a statement of the expected length of time needed for the withdrawal;

(10) the time and place of hearings and of other public involvement concerning such withdrawal;

(11) the place where the records on the withdrawal can be examined by interested parties; and

(12) a report prepared by a qualified mining engineer, engineering geologist, or geologist which shall include but not be limited to information on: general geology, known mineral deposits, past and present mineral production, mining claims, mineral leases, evaluation of future mineral potential, present and potential market demands.

(d) Withdrawals aggregating less than five thousand acres; procedure applicable

A withdrawal aggregating less than five thousand acres may be made under this subsection by the Secretary on his own motion or upon request by a department or an agency head—

(1) for such period of time as he deems desirable for a resource use; or

(2) for a period of not more than twenty years for any other use, including but not limited to use for administrative sites, location of facilities, and other proprietary purposes; or

(3) for a period of not more than five years to preserve such tract for a specific use then under consideration by the Congress.

(e) Emergency withdrawals; procedure applicable; duration

When the Secretary determines, or when the Committee on Interior and Insular Affairs of either the House of Representatives or the Senate notifies the Secretary, that an emergency situation exists and that extraordinary measures must be taken to preserve values that would otherwise be lost, the Secretary notwith-

standing the provisions of subsections (c)(1) and (d) of this section, shall immediately make a withdrawal and file notice of such emergency withdrawal with the Committees on Interior and Insular Affairs of the Senate and the House of Representatives. Such emergency withdrawal shall be effective when made but shall last only for a period not to exceed three years and may not be extended except under the provisions of subsection (c)(1) or (d), whichever is applicable, and (b)(1) of this section. The information required in subsection (c)(2) of this subsection shall be furnished the committees within three months after filing such notice.

(f) Review of existing withdrawals and extensions; procedure applicable to extensions; duration

All withdrawals and extensions thereof, whether made prior to or after October 21, 1976, having a specific period shall be reviewed by the Secretary toward the end of the withdrawal period and may be extended or further extended only upon compliance with the provisions of subsection (c)(1) or (d) of this section, whichever is applicable, and only if the Secretary determines that the purpose for which the withdrawal was first made requires the extension, and then only for a period no longer than the length of the original withdrawal period. The Secretary shall report on such review and extensions to the Committees on Interior and Insular Affairs of the House of Representatives and the Senate.

(g) Processing and adjudication of existing applications

All applications for withdrawal pending on October 21, 1976 shall be processed and adjudicated to conclusion within fifteen years of October 21, 1976, in accordance with the provisions of this section. The segregative effect of any application not so processed shall terminate on that date.

(h) Public hearing required for new withdrawals

All new withdrawals made by the Secretary under this section (except an emergency withdrawal made under subsection (e) of this section) shall be promulgated after an opportunity for a public hearing.

(i) Consent for withdrawal of lands under administration of department or agency other than Department of the Interior

In the case of lands under the administration of any department or agency other than the Department of the Interior, the Secretary shall make, modify, and revoke withdrawals only with the consent of the head of the department or agency concerned, except when the provisions of subsection (e) of this section apply.

(j) Applicability of other Federal laws withdrawing lands as limiting authority

The Secretary shall not make, modify, or revoke any withdrawal created by Act of Congress; make a withdrawal which can be made only by Act of Congress; modify or revoke any withdrawal creating national monuments under the Act of June 8, 1906 (34 Stat. 225; 16 U.S.C. 431-433); or modify, or revoke any withdrawal which added lands to the National Wildlife Refuge System prior to October 21, 1976, or which thereafter adds lands to that System under the terms of this Act. Nothing in this Act is intended to modify or change any provision of the Act of February 27, 1976 (90 Stat. 199; 16 U.S.C. 668dd(a)).

(k) Authorization of appropriations for processing applications

There is hereby authorized to be appropriated the sum of $10,000,000 for the purpose of processing withdrawal applications pending on the effective date of this Act, to be available until expended.

(l) Review of existing withdrawals in certain States; procedure applicable for determination of future status of lands; authorization of appropriations

(1) The Secretary shall, within fifteen years of October 21, 1976, review withdrawals existing on October 21, 1976, in the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming of (1) all Federal lands other than withdrawals of the public lands administered by the Bureau of Land Management and of lands which, on October 21, 1976, were part of Indian reservations and other Indian holdings, the National Forest System, the National Park System, the National Wildlife Refuge System, other lands administered by the Fish and Wildlife Service or the Secretary through the Fish and Wildlife Service, the National Wild and Scenic Rivers System, and the National System of Trails; and (2) all public lands administered by the Bureau of Land Management and of lands in the National Forest System (except those in wilderness areas, and those areas formally identified as primitive or natural areas or designated as national recreation areas) which closed the lands to appropriation under the Mining Law of 1872 (17 Stat. 91, as amended; 30 U.S.C. 22 et seq.) or to leasing under the Mineral Leasing Act of 1920 (41 Stat. 437, as amended; 30 U.S.C. 181 et seq.).

(2) In the review required by paragraph (1) of this subsection, the Secretary shall determine whether, and for how long, the continuation of the existing withdrawal of the lands would be, in his judgment, consistent with the statutory objectives of the programs for which the lands were dedicated and of the other relevant programs. The Secretary shall report his recommendations to the President, together with statements of concurrence or nonconcurrence submitted by the heads of the departments or agencies which administer the lands. The President shall transmit this report to the President of the Senate and the Speaker of the House of Representatives, together with his recommendations for action by the Secretary, or for legislation. The Secretary may act to terminate withdrawals other than those made by Act of the Congress in accordance with the recommendations of the President unless before the end of ninety days (not counting days on which the Senate and the House of Representatives has adjourned for more than three consecutive days) beginning on the day the report of the President has been submitted to the Senate and the House of Representatives the Congress has

adopted a concurrent resolution indicating otherwise. If the committee to which a resolution has been referred during the said ninety day period, has not reported it at the end of thirty calendar days after its referral, it shall be in order to either discharge the committee from further consideration of such resolution or to discharge the committee from consideration of any other resolution with respect to the Presidential recommendation. A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported such a resolution), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to. If the motion to discharge is agreed to or disagreed to, the motion may not be made with respect to any other resolution with respect to the same Presidential recommendation. When the committee has reprinted, or has been discharged from further consideration of a resolution, it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(3) There are hereby authorized to be appropriated not more than $10,000,000 for the purpose of paragraph (1) of this subsection to be available until expended to the Secretary and to the heads of other departments and agencies which will be involved.

(Pub. L. 94-579, title II, § 204, Oct. 21, 1976, 90 Stat. 2751.)

REFERENCES IN TEXT

On and after the effective date of this Act, referred to in subsecs. (a) and (k), probably means on and after the date of enactment of Pub. L. 94-579, which was approved Oct. 21, 1976.

The Act of June 8, 1906, referred to in subsec. (j), is act June 8, 1906, ch. 3060, 34 Stat. 225, popularly known as the Antiquities Act of 1906, which is classified generally to sections 431, 432, and 433 of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 431 of Title 16 and Tables.

The Act of February 27, 1976 (90 Stat. 199; 16 U.S.C. 668dd(a)), referred to in subsec. (j), is Pub. L. 94-223, Feb. 27, 1976, 90 Stat. 199, which amended section 668dd of Title 16, Conservation. For complete classification of this Act to the Code, see Tables.

This Act, referred to in subsec. (j), is Pub. L. 94-579, Oct. 21, 1976, 90 Stat. 2743, as amended, known as the Federal Land Policy and Management Act of 1976. For complete classification of this Act to the Code, see Tables.

The Mining Law of 1872 (17 Stat. 91, as amended; 30 U.S.C. 22 et seq.), referred to in subsec. (*l*)(1), is act May 10, 1872, ch. 152, 17 Stat. 91, as amended, which was incorporated into the Revised Statutes of 1878 as R.S. §§ 2319 to 2328, 2331, 2333 to 2337, and 2344, which are classified to sections 22 to 24, 26 to 28, 29, 30, 33 to 35, 37, 39 to 42, and 47 of Title 30, Mineral Lands and Mining. For complete classification of such Revised Statutes sections to the Code, see Tables.

The Mineral Leasing Act of 1920 (41 Stat. 437, as amended; 30 U.S.C. 181 et seq.), referred to in subsec. (*l*)(1), is act Feb. 25, 1920, ch. 85, 41 Stat. 437, as amended, which is classified principally to chapter 3A (§ 181 et seq.) of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 181 of Title 30 and Tables.

CHANGE OF NAME

The Committee on Interior and Insular Affairs of the Senate, referred to in subsecs. (e) and (f), was abolished and replaced by the Committee on Energy and Natural Resources of the Senate, effective Feb. 11, 1977. See Rule XXV of the Standing Rules of the Senate, as amended by Senate Resolution 4 (popularly cited as the "Committee System Reorganization Amendments of 1977"), approved Feb. 4, 1977.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1712, 1732, 1782 of this title.

§ 1715. Acquisitions of public lands and access over non-Federal lands to National Forest System units

(a) Authorization and limitations on authority of Secretary of the Interior and Secretary of Agriculture

Notwithstanding any other provisions of law, the Secretary, with respect to the public lands and the Secretary of Agriculture, with respect to the acquisition of access over non-Federal lands to units of the National Forest System, are authorized to acquire pursuant to this Act by purchase, exchange, donation, or eminent domain, lands or interests therein: *Provided*, That with respect to the public lands, the Secretary may exercise the power of eminent domain only if necessary to secure access to public lands, and then only if the lands so acquired are confined to as narrow a corridor as is necessary to serve such purpose. Nothing in this subsection shall be construed as expanding or limiting the authority of the Secretary of Agriculture to acquire land by eminent domain within the boundaries of units of the National Forest System.

(b) Conformity to departmental policies and land-use plan of acquisitions

Acquisitions pursuant to this section shall be consistent with the mission of the department involved and with applicable departmental land-use plans.

(c) Status of lands and interests in lands upon acquisition by Secretary of the Interior; transfers to Secretary of Agriculture of lands and interests in lands acquired within National Forest System boundaries

Lands and interests in lands acquired by the Secretary pursuant to this section or section 1716 of this title shall, upon acceptance of title, become public lands, and, for the administration of public land laws not repealed by this Act, shall remain public lands. If such acquired lands or interests in lands are located within the exterior boundaries of a grazing district established pursuant to section 315 of this title,

they shall become a part of that district. Lands and interests in lands acquired pursuant to this section which are within boundaries of the National Forest System may be transferred to the Secretary of Agriculture and shall then become National Forest System lands and subject to all the laws, rules, and regulations applicable thereto.

(d) Status of lands and interests in lands upon acquisition by Secretary of Agriculture

Lands and interests in lands acquired by the Secretary of Agriculture pursuant to this section shall, upon acceptance of title, become National Forest System lands subject to all the laws, rules, and regulations applicable thereto.

(Pub. L. 94-579, title II, § 205, Oct. 21, 1976, 90 Stat. 2755.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (a) and (c), is Pub. L. 94-579, Oct. 21, 1976, 90 Stat. 2743, as amended, known as the Federal Land Policy and Management Act of 1976. For complete classification of this Act to the Code, see Tables.

The public land laws, referred to in subsec. (c), are classified generally to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1716, 1748 of this title.

§ 1716. Exchanges of public lands or interests therein within the National Forest System

(a) Authorization and limitations on authority of Secretary of the Interior and Secretary of Agriculture

A tract of public land or interests therein may be disposed of by exchange by the Secretary under this Act and a tract of land or interests therein within the National Forest System may be disposed of by exchange by the Secretary of Agriculture under applicable law where the Secretary concerned determines that the public interest will be well served by making that exchange: *Provided*, That when considering public interest the Secretary concerned shall give full consideration to better Federal land management and the needs of State and local people, including needs for lands for the economy, community expansion, recreation areas, food, fiber, minerals, and fish and wildlife and the Secretary concerned finds that the values and the objectives which Federal lands or interests to be conveyed may serve if retained in Federal ownership are not more than the values of the non-Federal lands or interests and the public objectives they could serve if acquired.

(b) Implementation requirements

In exercising the exchange authority granted by subsection (a) of this section or by section 1715(a) of this title, the Secretary may accept title to any non-Federal land or interests therein in exchange for such land, or interests therein which he finds proper for transfer out of Federal ownership and which are located in the same State as the non-Federal land or interest to be acquired. For the purposes of this subsection, unsurveyed school sections which, upon survey by the Secretary, would become State lands, shall be considered as "non-Federal lands". The values of the lands exchanged by the Secretary under this Act and by the Secretary of Agriculture under applicable law relating to lands within the National Forest System either shall be equal, or if they are not equal, the values shall be equalized by the payment of money to the grantor or to the Secretary concerned as the circumstances require so long as payment does not exceed 25 per centum of the total value of the lands or interests transferred out of Federal ownership. The Secretary concerned shall try to reduce the amount of the payment of money to as small an amount as possible.

(c) Status of lands acquired upon exchange by Secretary of the Interior

Lands acquired by exchange under this section by the Secretary which are within the boundaries of the National Forest System may be transferred to the Secretary of Agriculture and shall then become National Forest System lands and subject to all the laws, rules, and regulations applicable to the National Forest System. Lands acquired by exchange by the Secretary under this section which are within the boundaries of National Park, Wildlife Refuge, Wild and Scenic Rivers, Trails, or any other System established by Act of Congress may be transferred to the appropriate agency head for administration as part of such System and in accordance with the laws, rules, and regulations applicable to such System.

(Pub. L. 94-579, title II, § 206, Oct. 21, 1976, 90 Stat. 2756.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (a) and (b), is Pub. L. 94-579, Oct. 21, 1976, 90 Stat. 2743, as amended, known as the Federal Land Policy and Management Act of 1976. For complete classification of this Act to the Code, see Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1715, 1718, 1719 of this title; title 16 section 460mm-1; title 30 sections 193, 1260.

§ 1717. Qualifications of conveyees

No tract of land may be disposed of under this Act, whether by sale, exchange, or donation, to any person who is not a citizen of the United States, or in the case of a corporation, is not subject to the laws of any State or of the United States.

(Pub. L. 94-579, title II, § 207, Oct. 21, 1976, 90 Stat. 2757.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 94-579, Oct. 21, 1976, 90 Stat. 2743, as amended, known as the Federal Land Policy and Management Act of 1976. For complete classification of this Act to the Code, see Tables.

§ 1718. Documents of conveyance; terms, covenants, etc.

The Secretary shall issue all patents or other documents of conveyance after any disposal au-

thorized by this Act. The Secretary shall insert in any such patent or other document of conveyance he issues, except in the case of land exchanges, for which the provisions of subsection 1716(b) of this title shall apply, such terms, covenants, conditions, and reservations as he deems necessary to insure proper land use and protection of the public interest: *Provided*, That a conveyance of lands by the Secretary, subject to such terms, covenants, conditions, and reservations, shall not exempt the grantee from compliance with applicable Federal or State law or State land use plans: *Provided further*, That the Secretary shall not make conveyances of public lands containing terms and conditions which would, at the time of the conveyance, constitute a violation of any law or regulation pursuant to State and local land use plans, or programs.

(Pub. L. 94-579, title II, § 208, Oct. 21, 1976, 90 Stat. 2757.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 94-579, Oct. 21, 1976, 90 Stat. 2743, as amended, known as the Federal Land Policy and Management Act of 1976. For complete classification of this Act to the Code, see Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1746 of this title.

§ 1719. Mineral interests; reservation and conveyance requirements and procedures

(a) All conveyances of title issued by the Secretary, except those involving land exchanges provided for in section 1716 of this title, shall reserve to the United States all minerals in the lands, together with the right to prospect for, mine, and remove the minerals under applicable law and such regulations as the Secretary may prescribe, except that if the Secretary makes the findings specified in subsection (b) of this section, the minerals may then be conveyed together with the surface to the prospective surface owner as provided in subsection (b) of this section.

(b)(1) The Secretary, after consultation with the appropriate department or agency head, may convey mineral interests owned by the United States where the surface is or will be in non-Federal ownership, regardless of which Federal entity may have administered the surface, if he finds (1) that there are no known mineral values in the land, or (2) that the reservation of the mineral rights in the United States is interfering with or precluding appropriate nonmineral development of the land and that such development is a more beneficial use of the land than mineral development.

(2) Conveyance of mineral interests pursuant to this section shall be made only to the existing or proposed record owner of the surface, upon payment of administrative costs and the fair market value of the interests being conveyed.

(3) Before considering an application for conveyance of mineral interests pursuant to this section—

(i) the Secretary shall require the deposit by the applicant of a sum of money which he deems sufficient to cover administrative costs including, but not limited to, costs of conducting an exploratory program to determine the character of the mineral deposits in the land, evaluating the data obtained under the exploratory program to determine the fair market value of the mineral interests to be conveyed, and preparing and issuing the documents of conveyance: *Provided*, That, if the administrative costs exceed the deposit, the applicant shall pay the outstanding amount; and, if the deposit exceeds the administrative costs, the applicant shall be given a credit for or refund of the excess; or

(ii) the applicant, with the consent of the Secretary, shall have conducted, and submitted to the Secretary the results of, such an exploratory program, in accordance with standards promulgated by the Secretary.

(4) Moneys paid to the Secretary for administrative costs pursuant to this subsection shall be paid to the agency which rendered the service and deposited to the appropriation then current.

(Pub. L. 94-579, title II, § 209, Oct. 21, 1976, 90 Stat. 2757.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 30 section 193.

§ 1720. Coordination by Secretary of the Interior with State and local governments

At least sixty days prior to offering for sale or otherwise conveying public lands under this Act, the Secretary shall notify the Governor of the State within which such lands are located and the head of the governing body of any political subdivision of the State having zoning or other land use regulatory jurisdiction in the geographical area within which such lands are located, in order to afford the appropriate body the opportunity to zone or otherwise regulate, or change or amend existing zoning or other regulations concerning the use of such lands prior to such conveyance. The Secretary shall also promptly notify such public officials of the issuance of the patent or other document of conveyance for such lands.

(Pub. L. 94-579, title II, § 210, Oct. 21, 1976, 90 Stat. 2758.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 94-579, Oct. 21, 1976, 90 Stat. 2743, as amended, known as the Federal Land Policy and Management Act of 1976. For complete classification of this Act to the Code, see Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1721 of this title.

§ 1721. Conveyances of public lands to States, local governments, etc.

(a) Unsurveyed islands; authorization and limitations on authority

The Secretary is authorized to convey to States or their political subdivisions under the Recreation and Public Purposes Act (44 Stat.

741 as amended; 43 U.S.C. 869 et seq.), as amended, but without regard to the acreage limitations contained therein, unsurveyed islands determined by the Secretary to be public lands of the United States. The conveyance of any such island may be made without survey: *Provided, however,* That such island may be surveyed at the request of the applicant State or its political subdivision if such State or subdivision donates money or services to the Secretary for such survey, the Secretary accepts such money or services, and such services are conducted pursuant to criteria established by the Director of the Bureau of Land Management. Any such island so surveyed shall not be conveyed without approval of such survey by the Secretary prior to the conveyance.

(b) Omitted lands; authorization and limitations on authority

(1) The Secretary is authorized to convey to States and their political subdivisions under the Recreation and Public Purposes Act [43 U.S.C. 869 to 869-4], but without regard to the acreage limitations contained therein, lands other than islands determined by him after survey to be public lands of the United States erroneously or fraudulently omitted from the original surveys (hereinafter referred to as "omitted lands"). Any such conveyance shall not be made without a survey: *Provided,* That the prospective recipient may donate money or services to the Secretary for the surveying necessary prior to conveyance if the Secretary accepts such money or services, such services are conducted pursuant to criteria established by the Director of the Bureau of Land Management, and such survey is approved by the Secretary prior to the conveyance.

(2) The Secretary is authorized to convey to the occupant of any omitted lands which, after survey, are found to have been occupied and developed for a five-year period prior to January 1, 1975, if the Secretary determines that such conveyance is in the public interest and will serve objectives which outweigh all public objectives and values which would be served by retaining such lands in Federal ownership. Conveyance under this subparagraph shall be made at not less than the fair market value of the land, as determined by the Secretary, and upon payment in addition of administrative costs, including the cost of making the survey, the cost of appraisal, and the cost of making the conveyance.

(c) Conformity with land use plans and programs and coordination with State and local governments of conveyances

(1) No conveyance shall be made pursuant to this section until the relevant State government, local government, and areawide planning agency designated pursuant to section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 (80 Stat. 1255, 1262) [42 U.S.C. 3334] and/or section 6506 of title 31 have notified the Secretary as to the consistency of such conveyance with applicable State and local government land use plans and programs.

(2) The provisions of section 1720 of this title shall be applicable to all conveyances under this section.

(d) Applicability of other statutory requirements for authorized use of conveyed lands

The final sentence of section 1(c) of the Recreation and Public Purposes Act [43 U.S.C. 869(c)] shall not be applicable to conveyances under this section.

(e) Limitations on uses of conveyed lands

No conveyance pursuant to this section shall be used as the basis for determining the baseline between Federal and State ownership, the boundary of any State for purposes of determining the extent of a State's submerged lands or the line of demarcation of Federal jurisdiction, or any similar or related purpose.

(f) Applicability to lands within National Forest System, National Park System, National Wildlife Refuge System, and National Wild and Scenic Rivers System

The provisions of this section shall not apply to any lands within the National Forest System, defined in the Act of August 17, 1974 (88 Stat. 476; 16 U.S.C. 1601), the National Park System, the National Wildlife Refuge System, and the National Wild and Scenic Rivers System.

(g) Applicability to other statutory provisions authorizing sale of specific omitted lands

Nothing in this section shall supersede the provisions of the Act of December 22, 1928 (45 Stat. 1069; 43 U.S.C. 1068), as amended, and the Act of May 31, 1962 (76 Stat. 89), or any other Act authorizing the sale of specific omitted lands.

(Pub. L. 94-579, title II, § 211, Oct. 21, 1976, 90 Stat. 2758.)

REFERENCES IN TEXT

The Recreation and Public Purposes Act, referred to in subsecs. (a) and (b)(1), is act June 14, 1926, ch. 578, 44 Stat. 741, as amended, which is classified to sections 869 to 869-4 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 869 of this title and Tables.

The Act of August 17, 1974 (88 Stat. 476; 16 U.S.C. 1601), referred to in subsec. (f), is Pub. L. 93-378, Aug. 17, 1974, 88 Stat. 476, as amended, known as the Forest and Rangelands Renewable Resources Planning Act of 1974, which is classified generally to subchapter I (§ 1600 et seq.) chapter 36 of Title 16, Conservation. The provisions of such Act defining the lands within the National Forest System are set out in section 1609 of Title 16. For complete classification of this Act to the Code, see Short Title note set out under section 1600 of Title 16 and Tables.

The Act of December 22, 1928 (45 Stat. 1069; 43 U.S.C. 1068), as amended, referred to in subsec. (g), is act Dec. 22, 1928, ch. 47, 45 Stat. 1069, as amended, which is classified generally to chapter 25A (§ 1068 et seq.) of this title. For complete classification of this Act to the Code, see Tables.

The Act of May 31, 1962, referred to in subsec. (g), is Pub. L. 87-469, May 31, 1962, 76 Stat. 89, which is not classified to the Code.

CODIFICATION

In subsec. (c)(1), "section 6506 of title 31" was substituted for "title IV of the Intergovernmental Cooperation Act of 1968 (82 Stat. 1098, 1103-4) [42 U.S.C. 4231 et seq.]" on authority of Pub. L. 97-258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

§ 1722. Sale of public lands subject to unintentional trespass

(a) Preference right of contiguous landowners; offering price

Notwithstanding the provisions of the Act of September 26, 1968 (82 Stat. 870; 43 U.S.C. 1431-1435), hereinafter called the "1968 Act", with respect to applications under the 1968 Act which were pending before the Secretary as of the effective date of this subsection and which he approves for sale under the criteria prescribed by the 1968 Act, he shall give the right of first refusal to those having a preference right under section 2 of the 1968 Act [43 U.S.C. 1432]. The Secretary shall offer such lands to such preference right holders at their fair market value (exclusive of any values added to the land by such holders and their predecessors in interest) as determined by the Secretary as of September 26, 1973.

(b) Procedures applicable

Within three years after October 21, 1976, the Secretary shall notify the filers of applications subject to paragraph (a) of this section whether he will offer them the lands applied for and at what price; that is, their fair market value as of September 26, 1973, excluding any value added to the lands by the applicants or their predecessors in interest. He will also notify the President of the Senate and the Speaker of the House of Representatives of the lands which he has determined not to sell pursuant to paragraph (a) of this section and the reasons therefor. With respect to such lands which the Secretary determined not to sell, he shall take no other action to convey those lands or interests in them before the end of ninety days (not counting days on which the House of Representatives or the Senate has adjourned for more than three consecutive days) beginning on the date the Secretary has submitted such notice to the Senate and House of Representatives. If, during that ninety-day period, the Congress adopts a concurrent resolution stating the length of time such suspension of action should continue, he shall continue such suspension for the specified time period. If the committee to which a resolution has been referred during the said ninety-day period, has not reported it at the end of thirty calendar days after its referral, it shall be in order to either discharge the committee from further consideration of such resolution or to discharge the committee from consideration of any other resolution with respect to the suspension of action. A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported such a resolution), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to. If the motion to discharge is agreed to or disagreed to, the motion may not be made with respect to any other resolution with respect to the same suspension of action. When the committee has reprinted, or has been discharged from further consideration of a resolution, it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(c) Time for processing of applications and sales

Within five years after October 21, 1976, the Secretary shall complete the processing of all applications filed under the 1968 Act and hold sales covering all lands which he has determined to sell thereunder.

(Pub. L. 94-579, title II, § 214, Oct. 21, 1976, 90 Stat. 2760.)

REFERENCES IN TEXT

The Act of Sept. 26, 1968, referred to in subsec. (a), is Pub. L. 90-516, Sept. 26, 1968, 82 Stat. 870, which was classified generally to subchapter VII [§ 1431 et seq.] of chapter 30 of this title, and was omitted from the Code pursuant to section 1435 of this title, which provided that the authority granted by that subchapter was to expire three years from September 26, 1968, with certain exceptions. For complete classification of this Act to the Code prior to omission, see Tables.

The effective date of this subsection, referred to in subsec. (a), probably means the date of the enactment of such subsection (a) by Pub. L. 94-579, which was approved Oct. 21, 1976.

SUBCHAPTER III—ADMINISTRATION

§ 1731. Bureau of Land Management

(a) Director; appointment, qualifications, functions, and duties

The Bureau of Land Management established by Reorganization Plan Numbered 3, of 1946 shall have as its head a Director. Appointments to the position of Director shall hereafter be made by the President, by and with the advice and consent of the Senate. The Director of the Bureau shall have a broad background and substantial experience in public land and natural resource management. He shall carry out such functions and shall perform such duties as the Secretary may prescribe with respect to the management of lands and resources under his jurisdiction according to the applicable provisions of this Act and any other applicable law.

(b) Statutory transfer of functions, powers and duties relating to administration of laws

Subject to the discretion granted to him by Reorganization Plan Numbered 3 of 1950, the Secretary shall carry out through the Bureau all functions, powers, and duties vested in him and relating to the administration of laws which, on October 21, 1976, were carried out by him through the Bureau of Land Management established by section 403 of Reorganization Plan Numbered 3 of 1946. The Bureau shall administer such laws according to the provisions thereof existing as of October 21, 1976, as modi-

fied by the provisions of this Act or by subsequent law.

(c) Associate Director, Assistant Directors, and other employees; appointment and compensation

In addition to the Director, there shall be an Associate Director of the Bureau and so many Assistant Directors, and other employees, as may be necessary, who shall be appointed by the Secretary subject to the provisions of title 5 governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter 3 [1] of chapter 53 of such title relating to classification and General Schedule pay rates.

(d) Existing regulations relating to administration of laws

Nothing in this section shall affect any regulation of the Secretary with respect to the administration of laws administered by him through the Bureau on October 21, 1976.

(Pub. L. 94-579, title III, § 301, Oct. 21, 1976, 90 Stat. 2762.)

REFERENCES IN TEXT

The provision of Reorg. Plan No. 3 of 1946 establishing the Bureau of Land Management, referred to in subsec. (a), is section 403 of such Reorg. Plan. Section 403 of Reorg. Plan No. 3 of 1946, also referred to in subsec. (b), is set out as a note under section 1 of this title.

This Act, referred to in subsecs. (a) and (b), is Pub. L. 94-579, Oct. 21, 1976, 90 Stat. 2743, as amended, known as the Federal Land Policy and Management Act of 1976. For complete classification of this Act to the Code, see Tables.

Reorg. Plan No. 3 of 1950, referred to in subsec. (b), is set out under section 1451 of this title.

The provisions of title 5, governing appointments in the competitive service, referred to in subsec. (c), are classified to section 3301 et seq. of Title 5, Government Organization and Employees.

The General Schedule, referred to in subsec. (c), is set out under section 5332 of Title 5.

§ 1732. Management of use, occupancy, and development of public lands

(a) Multiple use and sustained yield requirements applicable; exception

The Secretary shall manage the public lands under principles of multiple use and sustained yield, in accordance with the land use plans developed by him under section 1712 of this title when they are available, except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law.

(b) Easements, permits, etc., for utilization through habitation, cultivation, and development of small trade or manufacturing concerns; applicable statutory requirements

In managing the public lands, the Secretary shall, subject to this Act and other applicable law and under such terms and conditions as are consistent with such law, regulate, through easements, permits, leases, licenses, published rules, or other instruments as the Secretary deems appropriate, the use, occupancy, and development of the public lands, including, but not limited to, long-term leases to permit individuals to utilize public lands for habitation, cultivation, and the development of small trade or manufacturing concerns: *Provided*, That unless otherwise provided for by law, the Secretary may permit Federal departments and agencies to use, occupy, and develop public lands only through rights-of-way under section 1767 of this title, withdrawals under section 1714 of this title, and, where the proposed use and development are similar or closely related to the programs of the Secretary for the public lands involved, cooperative agreements under section 1737(b) of this title: *Provided further*, That nothing in this Act shall be construed as authorizing the Secretary concerned to require Federal permits to hunt and fish on public lands or on lands in the National Forest System and adjacent waters or as enlarging or diminishing the responsibility and authority of the States for management of fish and resident wildlife. However, the Secretary concerned may designate areas of public land and of lands in the National Forest System where, and establish periods when, no hunting or fishing will be permitted for reasons of public safety, administration, or compliance with provisions of applicable law. Except in emergencies, any regulations of the Secretary concerned relating to hunting and fishing pursuant to this section shall be put into effect only after consultation with the appropriate State fish and game department. Nothing in this Act shall modify or change any provision of Federal law relating to migratory birds or to endangered or threatened species. Except as provided in section 1744, section 1782, and subsection (f) of section 1781 of this title and in the last sentence of this paragraph, no provision of this section or any other section of this Act shall in any way amend the Mining Law of 1872 or impair the rights of any locators or claims under that Act, including, but not limited to, rights of ingress and egress. In managing the public lands the Secretary shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.

(c) Revocation or suspension provision in instrument authorizing use, occupancy or development; violation of provision; procedure applicable

The Secretary shall insert in any instrument providing for the use, occupancy, or development of the public lands a provision authorizing revocation or suspension, after notice and hearing, of such instrument upon a final administrative finding of a violation of any term or condition of the instrument, including, but not limited to, terms and conditions requiring compliance with regulations under Acts applicable to the public lands and compliance with applicable State or Federal air or water quality standard or implementation plan: *Provided*, That such violation occurred on public lands covered by such instrument and occurred in connection with the exercise of rights and privileges granted by it: *Provided further*, That the Secretary shall terminate any such suspension no later than the date upon which he deter-

[1] So in original. Probably should be "III".

mines the cause of said violation has been rectified: *Provided further*, That the Secretary may order an immediate temporary suspension prior to a hearing or final administrative finding if he determines that such a suspension is necessary to protect health or safety or the environment: *Provided further*, That, where other applicable law contains specific provisions for suspension, revocation, or cancellation of a permit, license, or other authorization to use, occupy, or develop the public lands, the specific provisions of such law shall prevail.

(Pub. L. 94-579, title III, § 302, Oct. 21, 1976, 90 Stat. 2762.)

REFERENCES IN TEXT

This Act, referred to in subsec. (b), is Pub. L. 94-579, Oct. 21, 1976, 90 Stat. 2743, as amended, known as the Federal Land Policy and Management Act of 1976. For complete classification of this Act to the Code, see Tables.

The Mining Law of 1872, referred to in subsec. (b), is act May 10, 1872, ch. 152, 17 Stat. 91, which was incorporated into the Revised Statutes of 1878 as R.S. §§ 2319 to 2328, 2331, 2333 to 2337, and 2344, which are classified to sections 22 to 24, 26 to 28, 29, 30, 33 to 35, 37, 39 to 42, and 47 of Title 30, Mineral Lands and Mining. For complete classification of such Revised Statutes sections to the Code, see Tables.

TRANSFER OF FUNCTIONS

Enforcement functions of Secretary or other official in Department of Interior related to compliance with land use permits for temporary use of public lands and other associated land uses, issued under sections 1732, 1761, and 1763 to 1771 of this title, with respect preconstruction, construction, and initial operation of transportation systems for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of date of initial operation of the Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§ 102(e), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1733. Enforcement authority

(a) Regulations for implementation of management, use, and protection requirements; violations; criminal penalties

The Secretary shall issue regulations necessary to implement the provisions of this Act with respect to the management, use, and protection of the public lands, including the property located thereon. Any person who knowingly and willfully violates any such regulation which is lawfully issued pursuant to this Act shall be fined no more than $1,000 or imprisoned no more than twelve months, or both. Any person charged with a violation of such regulation may be tried and sentenced by any United States magistrate designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions and limitations as provided for in section 3401 of title 18.

(b) Civil actions by Attorney General for violations of regulations; nature of relief; jurisdiction

At the request of the Secretary, the Attorney General may institute a civil action in any United States district court for an injunction or other appropriate order to prevent any person from utilizing public lands in violation of regulations issued by the Secretary under this Act.

(c) Contracts for enforcement of Federal laws and regulations by local law enforcement officials; procedure applicable; contract requirements and implementation

(1) When the Secretary determines that assistance is necessary in enforcing Federal laws and regulations relating to the public lands or their resources he shall offer a contract to appropriate local officials having law enforcement authority within their respective jurisdictions with the view of achieving maximum feasible reliance upon local law enforcement officials in enforcing such laws and regulations. The Secretary shall negotiate on reasonable terms with such officials who have authority to enter into such contracts to enforce such Federal laws and regulations. In the performance of their duties under such contracts such officials and their agents are authorized to carry firearms; execute and serve any warrant or other process issued by a court or officer of competent jurisdiction; make arrests without warrant or process for a misdemeanor he has reasonable grounds to believe is being committed in his presence or view, or for a felony if he has reasonable grounds to believe that the person to be arrested has committed or is committing such felony; search without warrant or process any person, place, or conveyance according to any Federal law or rule of law; and seize without warrant or process any evidentiary item as provided by Federal law. The Secretary shall provide such law enforcement training as he deems necessary in order to carry out the contracted for responsibilities. While exercising the powers and authorities provided by such contract pursuant to this section, such law enforcement officials and their agents shall have all the immunities of Federal law enforcement officials.

(2) The Secretary may authorize Federal personnel or appropriate local officials to carry out his law enforcement responsibilities with respect to the public lands and their resources. Such designated personnel shall receive the training and have the responsibilities and authority provided for in paragraph (1) of this subsection.

(d) Cooperation with regulatory and law enforcement officials of any State or political subdivision in enforcement of laws or ordinances

In connection with the administration and regulation of the use and occupancy of the public lands, the Secretary is authorized to cooperate with the regulatory and law enforcement officials of any State or political subdivision thereof in the enforcement of the laws or ordinances of such State or subdivision. Such cooperation may include reimbursement to a State or its subdivision for expenditures incurred by it in connection with activities which assist in the administration and regulation of use and occupancy of the public lands.

(e) Uniformed desert ranger force in California Desert Conservation Area; establishment; enforcement of Federal laws and regulations

Nothing in this section shall prevent the Secretary from promptly establishing a uniformed desert ranger force in the California Desert Conservation Area established pursuant to section 1781 of this title for the purpose of enforcing Federal laws and regulations relating to the public lands and resources managed by him in such area. The officers and members of such ranger force shall have the same responsibilities and authority as provided for in paragraph (1) of subsection (c) of this section.

(f) Applicability of other Federal enforcement provisions

Nothing in this Act shall be construed as reducing or limiting the enforcement authority vested in the Secretary by any other statute.

(g) Unlawful activities

The use, occupancy, or development of any portion of the public lands contrary to any regulation of the Secretary or other responsible authority, or contrary to any order issued pursuant to any such regulation, is unlawful and prohibited.

(Pub. L. 94-579, title III, § 303, Oct. 21, 1976, 90 Stat. 2763.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (a), (b), and (f), is Pub. L. 94-579, Oct. 21, 1976, 90 Stat. 2743, as amended, known as the Federal Land Policy and Management Act of 1976. For complete classification of this Act to the Code, see Tables.

§ 1734. Fees, charges, and commissions

(a) Authority to establish and modify

Notwithstanding any other provision of law, the Secretary may establish reasonable filing and service fees and reasonable charges, and commissions with respect to applications and other documents relating to the public lands and may change and abolish such fees, charges, and commissions.

(b) Deposits for payments to reimburse reasonable costs of United States

The Secretary is authorized to require a deposit of any payments intended to reimburse the United States for reasonable costs with respect to applications and other documents relating to such lands. The moneys received for reasonable costs under this subsection shall be deposited with the Treasury in a special account and are hereby authorized to be appropriated and made available until expended. As used in this section "reasonable costs" include, but are not limited to, the costs of special studies; environmental impact statements; monitoring construction, operation, maintenance, and termination of any authorized facility; or other special activities. In determining whether costs are reasonable under this section, the Secretary may take into consideration actual costs (exclusive of management overhead), the monetary value of the rights or privileges sought by the applicant, the efficiency to the government processing involved, that portion of the cost incurred for the benefit of the general public interest rather than for the exclusive benefit of the applicant, the public service provided, and other factors relevant to determining the reasonableness of the costs.

(c) Refunds

In any case where it shall appear to the satisfaction of the Secretary that any person has made a payment under any statute relating to the sale, lease, use, or other disposition of public lands which is not required or is in excess of the amount required by applicable law and the regulations issued by the Secretary, the Secretary, upon application or otherwise, may cause a refund to be made from applicable funds.

(Pub. L. 94-579, title III, § 304, Oct. 21, 1976, 90 Stat. 2765.)

FILING FEES FOR APPLICATIONS FOR NONCOMPETITIVE OIL AND GAS LEASES; STUDY AND REPORT OF RENTAL CHARGES ON OIL AND GAS LEASES

Pub. L. 97-35, title XIV, § 1401(d), Aug. 13, 1981, 95 Stat. 748, provided that:

"(1) Notwithstanding any other provision of law, effective October 1, 1981, all applications for noncompetitive oil and gas leases shall be accompanied by a filing fee of not less than $25 for each such application: *Provided*, That any increase in the filing fee above $25 shall be established by regulation and subject to the provisions of the Act of August 31, 1951 (65 Stat. 290) [probably means title V of that Act which was classified to section 483a of former Title 31, Money and Finance and was repealed and reenacted as section 9701 of Title 31 by Pub. L. 97-258] the Act of October 20, 1976 (90 Stat. 2765) [probably should be Oct. 21, 1976, meaning this chapter] but not limited to actual costs. Such fees shall be retained as a service charge even though the application or offer may be rejected or withdrawn in whole or in part.

"(2) The Secretary of the Interior is hereby directed to conduct a study and report to Congress within one year of the date of enactment of this Act [Aug. 13, 1981], regarding the current annual rental charges on all noncompetitive oil and gas leases to investigate the feasibility and effect of raising such rentals."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2005 of this title; title 16 section 3164.

§ 1735. Forfeitures and deposits

(a) Credit to separate account in Treasury; appropriation and availability

Any moneys received by the United States as a result of the forfeiture of a bond or other security by a resource developer or purchaser or permittee who does not fulfill the requirements of his contract or permit or does not comply with the regulations of the Secretary; or as a result of a compromise or settlement of any claim whether sounding in tort or in contract involving present or potential damage to the public lands shall be credited to a separate account in the Treasury and are hereby authorized to be appropriated and made available, until expended as the Secretary may direct, to cover the cost to the United States of any improvement, protection, or rehabilitation work on those public lands which has been rendered

necessary by the action which has led to the forfeiture, compromise, or settlement.

(b) Expenditure of moneys collected administering Oregon and California Railroad and Coos Bay Wagon Road Grant lands

Any moneys collected under this Act in connection with lands administered under the Act of August 28, 1937 (50 Stat. 874; 43 U.S.C. 1181a-1181j), shall be expended for the benefit of such land only.

(c) Refunds

If any portion of a deposit or amount forfeited under this Act is found by the Secretary to be in excess of the cost of doing the work authorized under this Act, the Secretary, upon application or otherwise, may cause a refund of the amount in excess to be made from applicable funds.

(Pub. L. 94-579, title III, § 305, Oct. 21, 1976, 90 Stat. 2765.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (b) and (c), is Pub. L. 94-579, Oct. 21, 1976, 90 Stat. 2743, as amended, known as the Federal Land Policy and Management Act of 1976. For complete classification of this Act to the Code, see Tables.

The Act of Aug. 28, 1937 (50 Stat. 874; 43 U.S.C. 1181a-1181j), referred to in subsec. (b), is act Aug. 28, 1937, ch. 876, 50 Stat. 874, as amended, which enacted sections 1181a to 1181f of this title. Sections 1181f-1 to 1181f-4, included within the parenthetical reference to sections 1181a to 1181j, were enacted by Act May 24, 1939, ch. 144, 53 Stat. 753. Sections 1181g to 1181j, also included within the parenthetical reference to sections 1181a to 1181j, were enacted by act June 24, 1954, ch. 357, 68 Stat. 270. For complete classification of these Acts to the Code, see Tables.

§ 1736. Working capital fund

(a) Establishment; availability of fund

There is hereby established a working capital fund for the management of the public lands. This fund shall be available without fiscal year limitation for expenses necessary for furnishing, in accordance with the Federal Property and Administrative Services Act of 1949 (63 Stat. 377, as amended), and regulations promulgated thereunder, supplies and equipment services in support of Bureau programs, including but not limited to, the purchase or construction of storage facilities, equipment yards, and related improvements and the purchase, lease, or rent of motor vehicles, aircraft, heavy equipment, and fire control and other resource management equipment within the limitations set forth in appropriations made to the Secretary for the Bureau.

(b) Initial funding; subsequent transfers

The initial capital of the fund shall consist of appropriations made for that purpose together with the fair and reasonable value at the fund's inception of the inventories, equipment, receivables, and other assets, less the liabilities, transferred to the fund. The Secretary is authorized to make such subsequent transfers to the fund as he deems appropriate in connection with the functions to be carried on through the fund.

(c) Payments credited to fund; amount; advancement or reimbursement

The fund shall be credited with payments from appropriations, and funds of the Bureau, other agencies of the Department of the Interior, other Federal agencies, and other sources, as authorized by law, at rates approximately equal to the cost of furnishing the facilities, supplies, equipment, and services (including depreciation and accrued annual leave). Such payments may be made in advance in connection with firm orders, or by way of reimbursement.

(d) Authorization of appropriations

There is hereby authorized to be appropriated a sum not to exceed $3,000,000 as initial capital of the working capital fund.

(Pub. L. 94-579, title III, § 306, Oct. 21, 1976, 90 Stat. 2766.)

REFERENCES IN TEXT

The Federal Property and Administrative Services Act, referred to in subsec. (a), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended, known as the Federal Property and Administrative Services Act of 1949. Provisions of the Act relating to management and disposal of property and to procurement procedures are classified generally to chapter 10 (§ 471 et seq.) of Title 40, Public Buildings, Property and Works, and subchapter IV (§ 251 et seq.) of chapter 4 of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 471 of Title 40 and Tables.

§ 1737. Implementation provisions

(a) Investigations, studies, and experiments

The Secretary may conduct investigations, studies, and experiments, on his own initiative or in cooperation with others, involving the management, protection, development, acquisition, and conveying of the public lands.

(b) Contracts and cooperative agreements

Subject to the provisions of applicable law, the Secretary may enter into contracts and cooperative agreements involving the management, protection, development, and sale of public lands.

(c) Contributions and donations of money, services, and property

The Secretary may accept contributions or donations of money, services, and property, real, personal, or mixed, for the management, protection, development, acquisition, and conveying of the public lands, including the acquisition of rights-of-way for such purposes. He may accept contributions for cadastral surveying performed on federally controlled or intermingled lands. Moneys received hereunder shall be credited to a separate account in the Treasury and are hereby authorized to be appropriated and made available until expended, as the Secretary may direct, for payment of expenses incident to the function toward the administration of which the contributions were made and for refunds to depositors of amounts contributed by them in specific instances where contributions are in excess of their share of the cost.

(Pub. L. 94-579, title III, § 307, Oct. 21, 1976, 90 Stat. 2766.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1732 of this title.

§ 1738. Contracts for surveys and resource protection; renewals; funding requirements

(a) The Secretary is authorized to enter into contracts for the use of aircraft, and for supplies and services, prior to the passage of an appropriation therefor, for airborne cadastral survey and resource protection operations of the Bureau. He may renew such contracts annually, not more than twice, without additional competition. Such contracts shall obligate funds for the fiscal years in which the costs are incurred.

(b) Each such contract shall provide that the obligation of the United States for the ensuing fiscal years is contingent upon the passage of an applicable appropriation, and that no payment shall be made under the contract for the ensuing fiscal years until such appropriation becomes available for expenditure.

(Pub. L. 94-579, title III, § 308, Oct. 21, 1976, 90 Stat. 2767.)

§ 1739. Advisory councils

(a) Establishment; membership; operation

The Secretary shall establish advisory councils of not less than ten and not more than fifteen members appointed by him from among persons who are representative of the various major citizens' interests concerning the problems relating to land use planning or the management of the public lands located within the area for which an advisory council is established. At least one member of each council shall be an elected official of general purpose government serving the people of such area. To the extent practicable there shall be no overlap or duplication of such councils. Appointments shall be made in accordance with rules prescribed by the Secretary. The establishment and operation of an advisory council established under this section shall conform to the requirements of the Federal Advisory Committee Act (86 Stat. 770).

(b) Meetings

Notwithstanding the provisions of subsection (a) of this section, each advisory council established by the Secretary under this section shall meet at least once a year with such meetings being called by the Secretary.

(c) Travel and per diem payments

Members of advisory councils shall serve without pay, except travel and per diem will be paid each member for meetings called by the Secretary.

(d) Functions

An advisory council may furnish advice to the Secretary with respect to the land use planning, classification, retention, management, and disposal of the public lands within the area for which the advisory council is established and such other matters as may be referred to it by the Secretary.

(e) Public participation; procedures applicable

In exercising his authorities under this Act, the Secretary, by regulation, shall establish procedures, including public hearings where appropriate, to give the Federal, State, and local governments and the public adequate notice and an opportunity to comment upon the formulation of standards and criteria for, and to participate in, the preparation and execution of plans and programs for, and the management of, the public lands.

(Pub. L. 94-579, title III, § 309, Oct. 21, 1976, 90 Stat. 2767; Pub. L. 95-514, § 13, Oct. 25, 1978, 92 Stat. 1808.)

REFERENCES IN TEXT

The Federal Advisory Committee Act (86 Stat. 770), referred to in subsec. (a), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, and is set out in the Appendix to Title 5, Government Organization and Employees.

This Act, referred to in subsec. (e), is Pub. L. 94-579, Oct. 21, 1976, 90 Stat. 2743, as amended, known as the Federal Land Policy and Management Act of 1976. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-514 substituted in first sentence "shall establish" for "is authorized to establish".

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a council established by the Congress, its duration is otherwise provided for by law, see sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1781, 1904 of this title.

§ 1740. Rules and regulations

The Secretary, with respect to the public lands, shall promulgate rules and regulations to carry out the purposes of this Act and of other laws applicable to the public lands, and the Secretary of Agriculture, with respect to lands within the National Forest System, shall promulgate rules and regulations to carry out the purposes of this Act. The promulgation of such rules and regulations shall be governed by the provisions of chapter 5 of title 5, without regard to section 553(a)(2). Prior to the promulgation of such rules and regulations, such lands shall be administered under existing rules and regulations concerning such lands to the extent practical.

(Pub. L. 94-579, title III, § 310, Oct. 21, 1976, 90 Stat. 2767.)

REFERENCES IN TEXT

This Act, referred to in text is Pub. L. 94-579, Oct. 21, 1976, 90 Stat. 2743, as amended, known as the Fed-

eral Land Policy and Management Act of 1976. For complete classification of this Act to the Code, see Tables.

§ 1741. Annual reports

(a) Purpose; time for submission

For the purpose of providing information that will aid Congress in carrying out its oversight responsibilities for public lands programs and for other purposes, the Secretary shall prepare a report in accordance with subsections (b) and (c) of this section and submit it to the Congress no later than one hundred and twenty days after the end of each fiscal year beginning with the report for fiscal year 1979.

(b) Format

A list of programs and specific information to be included in the report as well as the format of the report shall be developed by the Secretary after consulting with the Committees on Interior and Insular Affairs of the House and Senate and shall be provided to the committees prior to the end of the second quarter of each fiscal year.

(c) Contents

The report shall include, but not be limited to, program identification information, program evaluation information, and program budgetary information for the preceding current and succeeding fiscal years.

(Pub. L. 94-579, title III, § 311, Oct. 21, 1976, 90 Stat. 2768.)

CHANGE OF NAME

The Committee on Interior and Insular Affairs of the Senate, referred to in subsec. (b), was abolished and replaced by the Committee on Energy and Natural Resources of the Senate, effective Feb. 11, 1977. See Rule XXV of the Standing Rules of the Senate, as amended by Senate Resolution 4 (popularly cited as the "Committee System Reorganization Amendments of 1977"), approved Feb. 4, 1977.

§ 1742. Search, rescue, and protection forces; emergency situations authorizing hiring

Where in his judgment sufficient search, rescue, and protection forces are not otherwise available, the Secretary is authorized in cases of emergency to incur such expenses as may be necessary (a) in searching for and rescuing, or in cooperating in the search for and rescue of, persons lost on the public lands, (b) in protecting or rescuing, or in cooperating in the protection and rescue of, persons or animals endangered by an act of God, and (c) in transporting deceased persons or persons seriously ill or injured to the nearest place where interested parties or local authorities are located.

(Pub. L. 94-579, title III, § 312, Oct. 21, 1976, 90 Stat. 2768.)

§ 1743. Disclosure of financial interests by officers or employees

(a) Annual written statement; availability to public

Each officer or employee of the Secretary and the Bureau who—

(1) performs any function or duty under this Act; and

(2) has any known financial interest in any person who (A) applies for or receives any permit, lease, or right-of-way under, or (B) applies for or acquires any land or interests therein under, or (C) is otherwise subject to the provisions of, this Act,

shall, beginning on February 1, 1977, annually file with the Secretary a written statement concerning all such interests held by such officer or employee during the preceding calendar year. Such statement shall be available to the public.

(b) Implementation of requirements

The Secretary shall—

(1) act within ninety days after October 21, 1976—

(A) to define the term "known financial interests" for the purposes of subsection (a) of this section; and

(B) to establish the methods by which the requirement to file written statements specified in subsection (a) of this section will be monitored and enforced, including appropriate provisions for the filing by such officers and employees of such statements and the review by the Secretary of such statements; and

(2) report to the Congress on June 1 of each calendar year with respect to such disclosures and the actions taken in regard thereto during the preceding calendar year.

(c) Exempted personnel

In the rules prescribed in subsection (b) of this section, the Secretary may identify specific positions within the Department of the Interior which are of a nonregulatory or nonpolicymaking nature and provide that officers or employees occupying such positions shall be exempt from the requirements of this section.

(d) Violations; criminal penalties

Any officer or employee who is subject to, and knowingly violates, this section, shall be fined not more than $2,500 or imprisoned not more than one year, or both.

(Pub. L. 94-579, title III, § 313, Oct. 21, 1976, 90 Stat. 2768.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a)(1), (2), is Pub. L. 94-579, Oct. 21, 1976, 90 Stat. 2743, as amended, known as the Federal Land Policy and Management Act of 1976. For complete classification of this Act to the Code, see Tables.

§ 1744. Recordation of mining claims

(a) Filing requirements

The owner of an unpatented lode or placer mining claim located prior to October 21, 1976, shall, within the three-year period following October 21, 1976 and prior to December 31 of each year thereafter, file the instruments required by paragraphs (1) and (2) of this subsection. The owner of an unpatented lode or placer mining claim located after October 21, 1976 shall, prior to December 31 of each year following the calendar year in which the said claim

was located, file the instruments required by paragraphs (1) and (2) of this subsection:

(1) File for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim (including but not limited to such notices as are provided by law to be filed when there has been a suspension or deferment of annual assessment work), an affidavit of assessment work performed thereon, on a detailed report provided by section 28-1 of title 30, relating thereto.

(2) File in the office of the Bureau designated by the Secretary a copy of the official record of the instrument filed or recorded pursuant to paragraph (1) of this subsection, including a description of the location of the mining claim sufficient to locate the claimed lands on the ground.

(b) Additional filing requirements

The owner of an unpatented lode or placer mining claim or mill or tunnel site located prior to October 21, 1976 shall, within the three-year period following October 21, 1976, file in the office of the Bureau designated by the Secretary a copy of the official record of the notice of location or certificate of location, including a description of the location of the mining claim or mill or tunnel site sufficient to locate the claimed lands on the ground. The owner of an unpatented lode or placer mining claim or mill or tunnel site located after October 21, 1976 shall, within ninety days after the date of location of such claim, file in the office of the Bureau designated by the Secretary a copy of the official record of the notice of location or certificate of location, including a description of the location of the mining claim or mill or tunnel site sufficient to locate the claimed lands on the ground.

(c) Failure to file as constituting abandonment; defective or untimely filing

The failure to file such instruments as required by subsections (a) and (b) of this section shall be deemed conclusively to constitute an abandonment of the mining claim or mill or tunnel site by the owner; but it shall not be considered a failure to file if the instrument is defective or not timely filed for record under other Federal laws permitting filing or recording thereof, or if the instrument is filed for record by or on behalf of some but not all of the owners of the mining claim or mill or tunnel site.

(d) Validity of claims, waiver of assessment, etc., as unaffected

Such recordation or application by itself shall not render valid any claim which would not be otherwise valid under applicable law. Nothing in this section shall be construed as a waiver of the assessment and other requirements of such law.

(Pub. L. 94-579, title III, § 314, Oct. 21, 1976, 90 Stat. 2769.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1732 of this title; title 30 section 188.

§ 1745. Disclaimer of interest in lands

(a) Issuance of recordable document; criteria

After consulting with any affected Federal agency, the Secretary is authorized to issue a document of disclaimer of interest or interests in any lands in any form suitable for recordation, where the disclaimer will help remove a cloud on the title of such lands and where he determines (1) a record interest of the United States in lands has terminated by operation of law or is otherwise invalid; or (2) the lands lying between the meander line shown on a plat of survey approved by the Bureau or its predecessors and the actual shoreline of a body of water are not lands of the United States; or (3) accreted, relicted, or avulsed lands are not lands of the United States.

(b) Procedures applicable

No document or disclaimer shall be issued pursuant to this section unless the applicant therefor has filed with the Secretary an application in writing and notice of such application setting forth the grounds supporting such application has been published in the Federal Register at least ninety days preceding the issuance of such disclaimer and until the applicant therefor has paid to the Secretary the administrative costs of issuing the disclaimer as determined by the Secretary. All receipts shall be deposited to the then-current appropriation from which expended.

(c) Construction as quit-claim deed from United States

Issuance of a document of disclaimer by the Secretary pursuant to the provisions of this section and regulations promulgated hereunder shall have the same effect as a quit-claim deed from the United States.

(Pub. L. 94-579, title III, § 315, Oct. 21, 1976, 90 Stat. 2770.)

§ 1746. Correction of conveyance documents

The Secretary may correct patents or documents of conveyance issued pursuant to section 1718 of this title or to other Acts relating to the disposal of public lands where necessary in order to eliminate errors. In addition, the Secretary may make corrections of errors in any documents of conveyance which have heretofore been issued by the Federal Government to dispose of public lands.

(Pub. L. 94-579, title III, § 316, Oct. 21, 1976, 90 Stat. 2770.)

§ 1747. Loans to States and political subdivisions; purposes; amounts; allocation; terms and conditions; interest rate; security; limitations; forebearance for benefit of borrowers; recordkeeping requirements; discrimination prohibited; deposit of receipts

(1) The Secretary is authorized to make loans to States and their political subdivisions in order to relieve social or economic impacts occasioned by the development of minerals leased in such States pursuant to the Act of February 25, 1920, as amended [30 U.S.C. 181 et seq.]. Such

loans shall be confined to the uses specified for the 50 per centum of mineral leasing revenues to be received by such States and subdivisions pursuant to section 35 of such Act [30 U.S.C. 191].

(2) The total amount of loans outstanding pursuant to this section for any State and political subdivisions thereof in any year shall be not more than the anticipated mineral leasing revenues to be received by that State pursuant to section 35 of the Act of February 25, 1920, as amended [30 U.S.C. 191], for the ten years following.

(3) The Secretary, after consultation with the Governors of the affected States, shall allocate such loans among the States and their political subdivisions in a fair and equitable manner, giving priority to those States and subdivisions suffering the most severe impacts.

(4) Loans made pursuant to this section shall be subject to such terms and conditions as the Secretary determines necessary to assure the achievement of the purpose of this section. The Secretary shall promulgate such regulations as may be necessary to carry out the provisions of this section no later than three months after August 20, 1978.

(5) Loans made pursuant to this section shall bear interest equivalent to the lowest interest rate paid on an issue of at least $1,000,000 of tax exempt bonds of such State or any agency thereof within the preceding calendar year.

(6) Any loan made pursuant to this section shall be secured only by a pledge of the revenues received by the State or the political subdivision thereof pursuant to section 35 of the Act of February 25, 1920, as amended [30 U.S.C. 191], and shall not constitute an obligation upon the general property or taxing authority of such unit of government.

(7) Notwithstanding any other provision of law, loans made pursuant to this section may be used for the non-Federal share of the aggregate cost of any project or program otherwise funded by the Federal Government which requires a non-Federal share for such project or program and which provides planning or public facilities otherwise eligible for assistance under this section.

(8) Nothing in this section shall be construed to preclude any forebearance [1] for the benefit of the borrower including loan restructuring, which may be determined by the Secretary as justified by the failure of anticipated mineral development or related revenues to materialize as expected when the loan was made pursuant to this section.

(9) Recipients of loans made pursuant to this section shall keep such records as the Secretary shall prescribe by regulation, including records which fully disclose the disposition of the proceeds of such assistance and such other records as the Secretary may require to facilitate an effective audit. The Secretary and the Comptroller General of the United States or their duly authorized representatives shall have access, for the purpose of audit, to such records.

(10) No person in the United States shall, on the grounds of race, color, religion, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or part with funds made available under this section.

(11) All amounts collected in connection with loans made pursuant to this section, including interest payments or repayments of principal on loans, fees, and other moneys, derived in connection with this section, shall be deposited in the Treasury as miscellaneous receipts.

(Pub. L. 94-579, title III, § 317(c), Oct. 21, 1976, 90 Stat. 2771; Pub. L. 95-352, § 1(f), Aug. 20, 1978, 92 Stat. 515.)

REFERENCES IN TEXT

The Act of February 25, 1920, as amended, referred to in par. (1), is act Feb. 25, 1920, ch. 85, 41 Stat. 437, as amended, popularly known as the Mineral Leasing Act of 1920, which is classified principally to chapter 3A (§ 181 et seq.) of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 181 of Title 30 and Tables.

CODIFICATION

Section is comprised of subsec. (c) of section 317 of Pub. L. 94-579. Subsecs. (a) and (b) of section 317 of Pub. L. 94-579 are classified to section 191 of Title 30, Mineral Lands and Mining, and a note set out under that section, respectively.

AMENDMENTS

1978—Pars. (1) and (2). Pub. L. 95-352 redesignated former par. (1) as pars. (1) and (2), and in par. (1), as redesignated, struck out provisions establishing interest rate requirements, and in par. (2), as redesignated, struck out exception for Alaska and requirements for repayment. Former par. (2) redesignated par. (3).

Par. (3). Pub. L. 95-352 redesignated par. (2) as par. (3). Former par. (3) redesignated (4).

Par. (4). Pub. L. 95-352 redesignated par. (3) as par. (4).

Pars. (5) to (11). Pub. L. 95-352 added pars. (5) to (11).

§ 1748. Funding requirements

(a) Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out the purposes and provisions of this Act, but no amounts shall be appropriated to carry out after October 1, 1978, any program, function, or activity of the Bureau under this or any other Act unless such sums are specifically authorized to be appropriated as of October 21, 1976 or are authorized to be appropriated in accordance with the provisions of subsection (b) of this section.

(b) Procedure applicable for authorization of appropriations

Consistent with section 1110 of title 31, beginning May 15, 1977, and not later than May 15 of each second even numbered year thereafter, the Secretary shall submit to the Speaker of the House of Representatives and the President of the Senate a request for the authorization of appropriations for all programs, functions, and activities of the Bureau to be carried out during the four-fiscal-year period beginning on October 1 of the calendar year following the calendar year in which such request is submitted.

[1] So in original.

The Secretary shall include in his request, in addition to the information contained in his budget request and justification statement to the Office of Management and Budget, the funding levels which he determines can be efficiently and effectively utilized in the execution of his responsibilities for each such program, function, or activity, notwithstanding any budget guidelines or limitations imposed by any official or agency of the executive branch.

(c) Distribution of receipts from Bureau from disposal of lands, etc.

Nothing in this section shall apply to the distribution of receipts of the Bureau from the disposal of lands, natural resources, and interests in lands in accordance with applicable law, nor to the use of contributed funds, private deposits for public survey work, and townsite trusteeships, nor to fund allocations from other Federal agencies, reimbursements from both Federal and non-Federal sources, and funds expended for emergency firefighting and rehabilitation.

(d) Purchase of certain public lands from Land and Water Conservation Fund

In exercising the authority to acquire by purchase granted by section 1715(a) of this title, the Secretary may use the Land and Water Conservation Fund to purchase lands which are necessary for proper management of public lands which are primarily of value for outdoor recreation purposes.

(Pub. L. 94-579, title III, § 318, Oct. 21, 1976, 90 Stat. 2771.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), is Pub. L. 94-579, Oct. 21, 1976, 90 Stat. 2743, as amended, known as the Federal Land Policy and Management Act of 1976. For complete classification of this Act to the Code, see Tables.

CODIFICATION

In subsec. (b), "section 1110 of title 31" was substituted for "section 607 of the Congressional Budget Act of 1974 [31 U.S.C. 11c]" on authority of Pub. L. 97-258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1904 of this title; title 16 section 670o.

SUBCHAPTER IV—RANGE MANAGEMENT

§ 1751. Grazing fees; feasibility study; contents; submission of report; annual distribution and use of range betterment funds; nature of distributions

(a) The Secretary of Agriculture and the Secretary of the Interior shall jointly cause to be conducted a study to determine the value of grazing on the lands under their jurisdiction in the eleven Western States with a view to establishing a fee to be charged for domestic livestock grazing on such lands which is equitable to the United States and to the holders of grazing permits and leases on such lands. In making such study, the Secretaries shall take into consideration the costs of production normally associated with domestic livestock grazing in the eleven Western States, differences in forage values, and such other factors as may relate to the reasonableness of such fees. The Secretaries shall report the result of such study to the Congress not later than one year from and after October 21, 1976, together with recommendations to implement a reasonable grazing fee schedule based upon such study. If the report required herein has not been submitted to the Congress within one year after October 21, 1976, the grazing fee charge then in effect shall not be altered and shall remain the same until such report has been submitted to the Congress. Neither Secretary shall increase the grazing fee in the 1977 grazing year.

(b)(1) Congress finds that a substantial amount of the Federal range lands is deteriorating in quality, and that installation of additional range improvements could arrest much of the continuing deterioration and could lead to substantial betterment of forage conditions with resulting benefits to wildlife, watershed protection, and livestock production. Congress therefore directs that 50 per centum or $10,000,000 per annum, whichever is greater of all moneys received by the United States as fees for grazing domestic livestock on public lands (other than from ceded Indian lands) under the Taylor Grazing Act (48 Stat. 1269; 43 U.S.C. 315 et seq.) and the Act of August 28, 1937 (50 Stat. 874; 43 U.S.C. 1181d), and on lands in National Forests in the sixteen contiguous Western States under the provisions of this section shall be credited to a separate account in the Treasury, one-half of which is authorized to be appropriated and made available for use in the district, region, or national forest from which such moneys were derived, as the respective Secretary may direct after consultation with district, regional, or national forest user representatives, for the purpose of on-the-ground range rehabilitation, protection, and improvements on such lands, and the remaining one-half shall be used for on-the-ground range rehabilitation, protection, and improvements as the Secretary concerned directs. Any funds so appropriated shall be in addition to any other appropriations made to the respective Secretary for planning and administration of the range betterment program and for other range management. Such rehabilitation, protection, and improvements shall include all forms of range land betterment including, but not limited to, seeding and reseeding, fence construction, weed control, water development, and fish and wildlife habitat enhancement as the respective Secretary may direct after consultation with user representatives. The annual distribution and use of range betterment funds authorized by this paragraph shall not be considered a major Federal action requiring a detailed statement pursuant to section 4332(c) of title 42.

(2) All distributions of moneys made under subsection (b)(1) of this section shall be in addition to distributions made under section 10 of the Taylor Grazing Act [43 U.S.C. 315i] and shall not apply to distribution of moneys made under section 11 of that Act [43 U.S.C. 315j]. The remaining moneys received by the United States as fees for grazing domestic livestock on

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the public lands shall be deposited in the Treasury as miscellaneous receipts.

(Pub. L. 94-579, title IV, § 401(a), (b)(1), (2), Oct. 21, 1976, 90 Stat. 2772; Pub. L. 95-514, § 6(b), Oct. 25, 1978, 92 Stat. 1806.)

REFERENCES IN TEXT

The Taylor Grazing Act (48 Stat. 1269; 43 U.S.C. 315 et seq.), referred to in subsec. (b), is act June 28, 1934, ch. 865, 48 Stat. 1269, as amended, which is classified principally to subchapter I (§ 315 et seq.) of chapter 8A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 315 of this title and Tables.

The Act of August 28, 1937, referred to in subsec. (b)(2), is act Aug. 28, 1937, ch. 876, 50 Stat. 874, as amended, which is classified to sections 1181a to 1181f of this title. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Subsec. (b)(2) of this section is comprised of the second and third sentences of section 401(b)(2) of Pub. L. 94-579. The first sentence of such section 401(b)(2) amended section 315i(b) of this title.

AMENDMENTS

1978—Subsec. (b)(1). Pub. L. 95-514 inserted "or $10,000,000 per annum, whichever is greater" following "50 per centum" and substituted "sixteen contiguous Western States" for "eleven contiguous Western States".

MORATORIUM ON INCREASE OF GRAZING FEE FOR 1978 GRAZING YEAR

Pub. L. 95-321, July 21, 1978, 92 Stat. 394, in order to allow the Congress sufficient time to analyze the report and recommendations of the Secretaries of Interior and Agriculture under subsec. (a) of this section and to take appropriate action, provided that the 1978 grazing year fee was not to be raised by the Secretary of the Interior for the grazing of livestock on public lands nor by the Secretary of Agriculture for such grazing on lands under the jurisdiction of the Forest Service.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1904 of this title.

§ 1752. Grazing leases and permits

(a) Terms and conditions

Except as provided in subsection (b) of this section, permits and leases for domestic livestock grazing on public lands issued by the Secretary under the Act of June 28, 1934 (48 Stat. 1269, as amended; 43 U.S.C. 315 et seq.) or the Act of August 28, 1937 (50 Stat. 874, as amended; 43 U.S.C. 1181a-1181j), or by the Secretary of Agriculture, with respect to lands within National Forests in the sixteen contiguous Western States, shall be for a term of ten years subject to such terms and conditions the Secretary concerned deems appropriate and consistent with the governing law, including, but not limited to, the authority of the Secretary concerned to cancel, suspend, or modify a grazing permit or lease, in whole or in part, pursuant to the terms and conditions thereof, or to cancel or suspend a grazing permit or lease for any violation of a grazing regulation or of any term or condition of such grazing permit or lease.

(b) Terms of lesser duration

Permits or leases may be issued by the Secretary concerned for a period shorter than ten years where the Secretary concerned determines that—

(1) the land is pending disposal; or

(2) the land will be devoted to a public purpose prior to the end of ten years; or

(3) it will be in the best interest of sound land management to specify a shorter term: *Provided*, That the absence from an allotment management plan of details the Secretary concerned would like to include but which are undeveloped shall not be the basis for establishing a term shorter than ten years: *Provided further*, That the absence of completed land use plans or court ordered environmental statements shall not be the sole basis for establishing a term shorter than ten years unless the Secretary determines on a case-by-case basis that the information to be contained in such land use plan or court ordered environmental impact statement is necessary to determine whether a shorter term should be established for any of the reasons set forth in items (1) through (3) of this subsection.

(c) First priority for renewal of expiring permit or lease

So long as (1) the lands for which the permit or lease is issued remain available for domestic livestock grazing in accordance with land use plans prepared pursuant to section 1712 of this title or section 1604 of title 16, (2) the permittee or lessee is in compliance with the rules and regulations issued and the terms and conditions in the permit or lease specified by the Secretary concerned, and (3) the permittee or lessee accepts the terms and conditions to be included by the Secretary concerned in the new permit or lease, the holder of the expiring permit or lease shall be given first priority for receipt of the new permit or lease.

(d) Allotment management plan requirements

All permits and leases for domestic livestock grazing issued pursuant to this section may incorporate an allotment management plan developed by the Secretary concerned. However, nothing in this subsection shall be construed to supersede any requirement for completion of court ordered environmental impact statements prior to development and incorporation of allotment management plans. If the Secretary concerned elects to develop an allotment management plan for a given area, he shall do so in careful and considered consultation, cooperation and coordination with the lessees, permittees, and landowners involved, the district grazing advisory boards established pursuant to section 1753 of this title, and any State or States having lands within the area to be covered by such allotment management plan. Allotment management plans shall be tailored to the specific range condition of the area to be covered by such plan, and shall be reviewed on a periodic basis to determine whether they have been effective in improving the range condition of the lands involved or whether such lands can

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be better managed under the provisions of subsection (e) of this section. The Secretary concerned may revise or terminate such plans or develop new plans from time to time after such review and careful and considered consultation, cooperation and coordination with the parties involved. As used in this subsection, the terms "court ordered environmental impact statement" and "range condition" shall be defined as in the "Public Rangelands Improvement Act of 1978 [43 U.S.C. 1901 et seq.]".

(e) Omission of allotment management plan requirements and incorporation of appropriate terms and conditions; reexamination of range conditions

In all cases where the Secretary concerned has not completed an allotment management plan or determines that an allotment management plan is not necessary for management of livestock operations and will not be prepared, the Secretary concerned shall incorporate in grazing permits and leases such terms and conditions as he deems appropriate for management of the permitted or leased lands pursuant to applicable law. The Secretary concerned shall also specify therein the numbers of animals to be grazed and the seasons of use and that he may reexamine the condition of the range at any time and, if he finds on reexamination that the condition of the range requires adjustment in the amount or other aspect of grazing use, that the permittee or lessee shall adjust his use to the extent the Secretary concerned deems necessary. Such readjustment shall be put into full force and effect on the date specified by the Secretary concerned.

(f) Allotment management plan applicability to non-Federal lands; appeal rights

Allotment management plans shall not refer to livestock operations or range improvements on non-Federal lands except where the non-Federal lands are intermingled with, or, with the consent of the permittee or lessee involved, associated with, the Federal lands subject to the plan. The Secretary concerned under appropriate regulations shall grant to lessees and permittees the right of appeal from decisions which specify the terms and conditions of allotment management plans. The preceding sentence of this subsection shall not be construed as limiting any other right of appeal from decisions of such officials.

(g) Cancellation of permit or lease; determination of reasonable compensation; notice

Whenever a permit or lease for grazing domestic livestock is canceled in whole or in part, in order to devote the lands covered by the permit or lease to another public purpose, including disposal, the permittee or lessee shall receive from the United States a reasonable compensation for the adjusted value, to be determined by the Secretary concerned, of his interest in authorized permanent improvements placed or constructed by the permittee or lessee on lands covered by such permit or lease, but not to exceed the fair market value of the terminated portion of the permittee's or lessee's interest therein. Except in cases of emergency, no permit or lease shall be canceled under this subsection without two years' prior notification.

(h) Applicability of provisions to rights, etc., in or to public lands or lands in National Forests

Nothing in this Act shall be construed as modifying in any way law existing on October 21, 1976, with respect to the creation of right, title, interest or estate in or to public lands or lands in National Forests by issuance of grazing permits and leases.

(Pub. L. 94-579, title IV, § 402, Oct. 21, 1976, 90 Stat. 2773; Pub. L. 95-514, §§ 7, 8, Oct. 25, 1978, 92 Stat. 1807.)

REFERENCES IN TEXT

The Act of June 28, 1934, referred to in subsec. (a) is act June 28, 1934, ch. 865, 48 Stat. 1269, as amended, known as the Taylor Grazing Act, which is classified principally to subchapter I (§ 315 et seq.) of chapter 8A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 315 of this title and Tables.

The Act of Aug. 28, 1937 (50 Stat. 874; 43 U.S.C. 1181a-1181j), referred to in subsec. (a), is act Aug. 28, 1937, ch. 876, 50 Stat. 874, as amended, which enacted sections 1181a to 1181f of this title. Sections 1181f-1 to 1181f-4, included within the parenthetical reference to sections 1181a to 1181j, were enacted by Act May 24, 1939, ch. 144, 53 Stat. 753. Sections 1181g to 1181j, also included within the parenthetical reference to sections 1181a to 1181j, were enacted by act June 24, 1954, ch. 357, 68 Stat. 270. For complete classification of these Acts to the Code, see Tables.

The Public Rangelands Improvement Act of 1978, referred to in subsec. (d), is Pub. L. 95-514, Oct. 25, 1978, 92 Stat. 1803, which is classified principally to chapter 37 (§ 1901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1901 of this title and Tables.

This Act, referred to in subsecs. (h), is Pub. L. 94-579, Oct. 21, 1976, 90 Stat. 2743, as amended, known as the Federal Land Policy and Management Act of 1976. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1978—Subsec. (a), Pub. L. 95-514, § 7(b), substituted "sixteen contiguous Western States" for "eleven contiguous Western States".

Subsec. (b)(3), Pub. L. 95-514, § 7(a), inserted provision that absence of completed land use plans or court ordered environmental statements shall not be the sole basis for establishing a term shorter than ten years unless information therein would be necessary to determine whether a shorter term should be established for any of the specified reasons.

Subsec. (d), Pub. L. 95-514, § 8(a), deleted ", with the exceptions authorized in subsection (e) of this section, on and after October 1, 1988," following "pursuant to this section" and inserted provisions prohibiting any requirements for completion of court ordered environmental impact statements prior to development and incorporation of allotment plans from being superseded by subsec. (d), providing for careful and considered consultation, cooperation, and coordination with certain persons, including landowners involved, district grazing advisory boards and States having lands within the covered area and for tailoring allotment management plans to the specific range condition of the covered area and periodic review thereof, authorizing the Secretary to terminate or develop the plans after review and careful and considered consultation, cooperation, and coordination with the parties involved, and defining the terms "court ordered environmental impact statement" and "range condition".

Subsec. (e), Pub. L. 95-514, § 8(b), substituted introductory word "In" for "Prior to October 1, 1988, or thereafter, in".

LIVESTOCK REDUCTIONS ON PUBLIC RANGELANDS. CRITERIA FOR PHASED GRAZING ALLOTMENT REDUCTIONS; TIME FOR APPEAL FROM FINAL GRAZING ALLOTMENT DECISION; PERCENTAGE REDUCTIONS EFFECTIVE WHEN DESIGNATED; EXCESS REDUCTIONS SUSPENDED PENDING FINAL APPELLATE ACTION; TIME FOR APPELLATE DECISION

Provisions requiring the Secretary of the Interior to develop criteria for extending, on a case-by-case basis, the period allowed for phased livestock reductions on public rangelands administered through the Bureau of Land Management up to five years; providing certain circumstances to be taken into account in such criteria; requiring appeals of reductions in grazing allotments on public rangelands to be taken within a certain time period; providing that reductions of up to 10 per centum in grazing allotments are effective when so designated by the Secretary; suspending proposed reductions in excess of 10 per centum pending final action on appeals; and requiring final action on appeals to be completed within 2 years of filing of the appeal were contained in the following appropriation acts:

Pub. L. 97-394, title I, § 1, Dec. 30, 1982, 96 Stat. 1968.

Pub. L. 97-100, title I, § 100, Dec. 23, 1981, 95 Stat. 1393.

Pub. L. 96-514, title I, § 100, Dec. 12, 1980, 94 Stat. 2959.

Pub. L. 96-126, title I, § 100, Nov. 27, 1979, 93 Stat. 956.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 25 section 640d-26.

§ 1753. Grazing advisory boards

(a) Establishment; maintenance

For each Bureau district office and National Forest headquarters office in the sixteen contiguous Western States having jurisdiction over more than five hundred thousand acres of lands subject to commercial livestock grazing (hereinafter in this section referred to as "office"), the Secretary and the Secretary of Agriculture, upon the petition of a simple majority of the livestock lessees and permittees under the jurisdiction of such office, shall establish and maintain at least one grazing advisory board of not more than fifteen advisers.

(b) Functions

The function of grazing advisory boards established pursuant to this section shall be to offer advice and make recommendations to the head of the office involved concerning the development of allotment management plans and the utilization of range-betterment funds.

(c) Appointment and terms of members

The number of advisers on each board and the number of years an adviser may serve shall be determined by the Secretary concerned in his discretion. Each board shall consist of livestock representatives who shall be lessees or permittees in the area administered by the office concerned and shall be chosen by the lessees and permittees in the area through an election prescribed by the Secretary concerned.

(d) Meetings

Each grazing advisory board shall meet at least once annually.

(e) Federal Advisory Committee Act applicability

Except as may be otherwise provided by this section, the provisions of the Federal Advisory Committee Act (86 Stat. 770) shall apply to grazing advisory boards.

(f) Expiration date

The provisions of this section shall expire December 31, 1985.

(Pub. L. 94-579, title IV, § 403, Oct. 21, 1976, 90 Stat. 2775; Pub. L. 95-514, § 10, Oct. 25, 1978, 92 Stat. 1808.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (e), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, and is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-514 substituted "sixteen contiguous Western States" for "eleven contiguous Western States".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1752, 1904 of this title.

SUBCHAPTER V—RIGHTS-OF-WAY

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 1702 of this title; title 16 section 3166; title 30 section 201.

§ 1761. Grant, issue, or renewal of rights-of-way; authorized purposes; procedures applicable

(a) The Secretary, with respect to the public lands and, the Secretary of Agriculture, with respect to lands within the National Forest System (except in each case land designated as wilderness), are authorized to grant, issue, or renew rights-of-way over, upon, under, or through such lands for—

(1) reservoirs, canals, ditches, flumes, laterals, pipes, pipelines, tunnels, and other facilities and systems for the impoundment, storage, transportation, or distribution of water;

(2) pipelines and other systems for the transportation or distribution of liquids and gases, other than water and other than oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom, and for storage and terminal facilities in connection therewith;

(3) pipelines, slurry and emulsion systems, and conveyor belts for transportation and distribution of solid materials, and facilities for the storage of such materials in connection therewith;

(4) systems for generation, transmission, and distribution of electric energy, except that the applicant shall also comply with all applicable requirements of the Federal Power Commission under the Federal Power Act of 1935 (49 Stat. 847; 16 U.S.C. 791);

(5) systems for transmission or reception of radio, television, telephone, telegraph, and other electronic signals, and other means of communication;

(6) roads, trails, highways, railroads, canals, tunnels, tramways, airways, livestock drive-

ways, or other means of transportation except where such facilities are constructed and maintained in connection with commercial recreation facilities on lands in the National Forest System; or

(7) such other necessary transportation or other systems or facilities which are in the public interest and which require rights-of-way over, upon, under, or through such lands.

(b)(1) The Secretary concerned shall require, prior to granting, issuing, or renewing a right-of-way, that the applicant submit and disclose those plans, contracts, agreements, or other information reasonably related to the use, or intended use, of the right-of-way, including its effect on competition, which he deems necessary to a determination, in accordance with the provisions of this Act, as to whether a right-of-way shall be granted, issued, or renewed and the terms and conditions which should be included in the right-of-way.

(2) If the applicant is a partnership, corporation, association, or other business entity, the Secretary concerned, prior to granting a right-of-way pursuant to this subchapter, shall require the applicant to disclose the identity of the participants in the entity, when he deems it necessary to a determination, in accordance with the provisions of this title, as to whether a right-of-way shall be granted, issued, or renewed and the terms and conditions which should be included in the right-of-way. Such disclosures shall include, where applicable: (A) the name and address of each partner; (B) the name and address of each shareholder owning 3 per centum or more of the shares, together with the number and percentage of any class of voting shares of the entity which such shareholder is authorized to vote; and (C) the name and address of each affiliate of the entity together with, in the case of an affiliate controlled by the entity, the number of shares and the percentage of any class of voting stock of that affiliate owned, directly or indirectly, by that entity, and, in the case of an affiliate which controls that entity, the number of shares and the percentage of any class of voting stock of that entity owned, directly or indirectly, by the affiliate.

(Pub. L. 94-579, title V, § 501, Oct. 21, 1976, 90 Stat. 2776.)

REFERENCES IN TEXT

The Federal Power Act of 1935 (49 Stat. 847; 16 U.S.C. 791), referred to in subsec. (a), probably means the Federal Power Act, June 20, 1920, ch. 285, 41 Stat. 1063, as amended, which is classified generally to chapter 12 (§ 791a et seq.) of Title 16, Conservation, and which was amended by act Aug. 26, 1935, ch. 687, title II, § 213, 49 Stat. 847. For complete classification of this Act to the Code, see section 791a of Title 16 and Tables.

This Act, referred to in subsec. (b), is Pub. L. 94-579, Oct. 21, 1976, 90 Stat. 2743, as amended, known as the Federal Land Policy and Management Act of 1976. For complete classification of this Act to the Code, see Tables.

TRANSFER OF FUNCTIONS

The Federal Power Commission was terminated and its functions, personnel, property, funds, etc., were transferred to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a), 7291, and 7293 of Title 42, The Public Health and Welfare.

Enforcement functions of the Secretary or other official in Department of Agriculture, insofar as they involve lands and programs under jurisdiction of that Department, related to compliance with land use permits for other associated land uses issued under sections 1761, and 1763 to 1771 of this title, and such functions of Secretary or other official in Department of Interior related to compliance with land use permits for temporary use of public lands and other associated land uses, issued under sections 1732, 1761, and 1763 to 1771 of this title, with respect to pre-construction, construction, and initial operation of transportation systems for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of date of initial operation of the Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§ 102(e), (f), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1770 of this title.

§ 1762. Roads

(a) Authority to acquire, construct, and maintain; financing arrangements

The Secretary, with respect to the public lands, is authorized to provide for the acquisition, construction, and maintenance of roads within and near the public lands in locations and according to specifications which will permit maximum economy in harvesting timber from such lands tributary to such roads and at the same time meet the requirements for protection, development, and management of such lands for utilization of the other resources thereof. Financing of such roads may be accomplished (1) by the Secretary utilizing appropriated funds, (2) by requirements on purchasers of timber and other products from the public lands, including provisions for amortization of road costs in contracts, (3) by cooperative financing with other public agencies and with private agencies or persons, or (4) by a combination of these methods: *Provided*, That, where roads of a higher standard than that needed in the harvesting and removal of the timber and other products covered by the particular sale are to be constructed, the purchaser of timber and other products from public lands shall not, except when the provisions of the second proviso of this subsection apply, be required to bear that part of the costs necessary to meet such higher standard, and the Secretary is authorized to make such arrangements to this end as may be appropriate: *Provided further*, That when timber is offered with the condition that the purchaser thereof will build a road or roads in accordance with standards specified in the offer, the purchaser of the timber will be responsible for paying the full costs of construction of such roads.

(b) Recordation of copies of affected instruments

Copies of all instruments affecting permanent interests in land executed pursuant to this

(c) Applicability of regulations or stipulations

Rights-of-way shall be granted, issued, or renewed pursuant to this subchapter under such regulations or stipulations, consistent with the provisions of this subchapter or any other applicable law, and shall also be subject to such terms and conditions as the Secretary concerned may prescribe regarding extent, duration, survey, location, construction, maintenance, transfer or assignment, and termination.

(d) Submission of plan of construction, operation, and rehabilitation by new project applicants; plan requirements

The Secretary concerned prior to granting or issuing a right-of-way pursuant to this subchapter for a new project which may have a significant impact on the environment, shall require the applicant to submit a plan of construction, operation, and rehabilitation for such right-of-way which shall comply with stipulations or with regulations issued by that Secretary, including the terms and conditions required under section 1765 of this title.

(e) Regulatory requirements for terms and conditions; revision and applicability of regulations

The Secretary concerned shall issue regulations with respect to the terms and conditions that will be included in rights-of-way pursuant to section 1765 of this title. Such regulations shall be regularly revised as needed. Such regulations shall be applicable to every right-of-way granted or issued pursuant to this subchapter and to any subsequent renewal thereof, and may be applicable to rights-of-way not granted or issued, but renewed pursuant to this subchapter.

(f) Removal or use of mineral and vegetative materials

Mineral and vegetative materials, including timber, within or without a right-of-way, may be used or disposed of in connection with construction or other purposes only if authorization to remove or use such materials has been obtained pursuant to applicable laws.

(g) Rental payments; amount, waiver, etc.

The holder of a right-of-way shall pay annually in advance the fair market value thereof as determined by the Secretary granting, issuing, or renewing such right-of-way: *Provided*, That when the annual rental is less than $100, the Secretary concerned may require advance payment for more than one year at a time: *Provided further*, That the Secretary concerned may waive rentals where a right-of-way is granted, issued, or renewed in reciprocation for a right-of-way conveyed to the United States in connection with a cooperative cost share program between the United States and the holder. The Secretary concerned may, by regulation or prior to promulgation of such regulations, as a condition of a right-of-way, require an applicant for or holder of a right-of-way to reimburse the United States for all reasonable administrative and other costs incurred in processing an application for such right-of-way and in inspection and monitoring of construction, operation, and termination of the facility pursuant to such right-of-way: *Provided, however*, That the Secretary concerned need not secure reimbursement in any situation where there is in existence a cooperative cost share right-of-way program between the United States and the holder of a right-of-way. Rights-of-way may be granted, issued, or renewed to a Federal, State, or local government or any agency or instrumentality thereof, to nonprofit associations or nonprofit corporations which are not themselves controlled or owned by profitmaking corporations or business enterprises, or to a holder where he provides without or at reduced charges a valuable benefit to the public or to the programs of the Secretary concerned, or to a holder in connection with the authorized use or occupancy of Federal land for which the United States is already receiving compensation for such lesser charge, including free use as the Secretary concerned finds equitable and in the public interest. Such rights-of-way issued at less than fair market value are not assignable except with the approval of the Secretary issuing the right-of-way. The moneys received for reimbursement of reasonable costs shall be deposited with the Treasury in a special account and are hereby authorized to be appropriated and made available until expended.

(h) Liability for damage or injury incurred by United States for use and occupancy of rights-of-way; indemnification of United States; no-fault liability; amount of damages

(1) The Secretary concerned shall promulgate regulations specifying the extent to which holders of rights-of-way under this subchapter shall be liable to the United States for damage or injury incurred by the United States caused by the use and occupancy of the rights-of-way. The regulations shall also specify the extent to which such holders shall indemnify or hold harmless the United States for liabilities, damages, or claims caused by their use and occupancy of the rights-of-way.

(2) Any regulation or stipulation imposing liability without fault shall include a maximum limitation on damages commensurate with the foreseeable risks or hazards presented. Any liability for damage or injury in excess of this amount shall be determined by ordinary rules of negligence.

(i) Bond or security requirements

Where he deems it appropriate, the Secretary concerned may require a holder of a right-of-way to furnish a bond, or other security, satisfactory to him to secure all or any of the obligations imposed by the terms and conditions of the right-of-way or by any rule or regulation of the Secretary concerned.

(j) Criteria for grant, issue, or renewal of right-of-way

The Secretary concerned shall grant, issue, or renew a right-of-way under this subchapter only when he is satisfied that the applicant has the technical and financial capability to construct the project for which the right-of-way is requested, and in accord with the requirements of this subchapter.

(Pub. L. 94-579, title V, § 504, Oct. 21, 1976, 90 Stat. 2778.)

section shall be recorded in each county where the lands are located.

(c) Maintenance or reconstruction of facilities by users

The Secretary may require the user or users of a road, trail, land, or other facility administered by him through the Bureau, including purchasers of Government timber and other products, to maintain such facilities in a satisfactory condition commensurate with the particular use requirements of each. Such maintenance to be borne by each user shall be proportionate to total use. The Secretary may also require the user or users of such a facility to reconstruct the same when such reconstruction is determined to be necessary to accommodate such use. If such maintenance or reconstruction cannot be so provided or if the Secretary determines that maintenance or reconstruction by a user would not be practical, then the Secretary may require that sufficient funds be deposited by the user to provide his portion of such total maintenance or reconstruction. Deposits made to cover the maintenance or reconstruction of roads are hereby made available until expended to cover the cost to the United States of accomplishing the purposes for which deposited: *Provided*, That deposits received for work on adjacent and overlapping areas may be combined when it is the most practicable and efficient manner of performing the work, and cost thereof may be determined by estimates: *And provided further*, That unexpended balances upon accomplishment of the purpose for which deposited shall be transferred to miscellaneous receipts or refunded.

(d) Fund for user fees for delayed payment to grantor

Whenever the agreement under which the United States has obtained for the use of, or in connection with, the public lands a right-of-way or easement for a road or an existing road or the right to use an existing road provides for delayed payments to the Government's grantor, any fees or other collections received by the Secretary for the use of the road may be placed in a fund to be available for making payments to the grantor.

(Pub. L. 94-579, title V, § 502, Oct. 21, 1976, 90 Stat. 2777.)

§ 1763. Right-of-way corridors; criteria and procedures applicable for designation

In order to minimize adverse environmental impacts and the proliferation of separate rights-of-way, the utilization of rights-of-way in common shall be required to the extent practical, and each right-of-way or permit shall reserve to the Secretary concerned the right to grant additional rights-of-way or permits for compatible uses on or adjacent to rights-of-way granted pursuant to this Act. In designating right-of-way corridors and in determining whether to require that rights-of-way be confined to them, the Secretary concerned shall take into consideration national and State land use policies, environmental quality, economic efficiency, national security, safety, and good engineering and technological practices. The Secretary concerned shall issue regulations containing the criteria and procedures he will use in designating such corridors. Any existing transportation and utility corridors may be designated as transportation and utility corridors pursuant to this subsection without further review.

(Pub. L. 94-579, title V, § 503, Oct. 21, 1976, 90 Stat. 2778.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 94-579, Oct. 21, 1976, 90 Stat. 2743, as amended, known as the Federal Land Policy and Management Act of 1976. For complete classification of this Act to the Code, see Tables.

TRANSFER OF FUNCTIONS

Enforcement functions of Secretary or other official in Department of Agriculture, insofar as they involve lands and programs under jurisdiction of that Department, related to compliance with land use permits for other associated land uses issued under sections 1761, and 1763 to 1771 of this title, and such functions of Secretary or other official in Department of Interior related to compliance with land use permits for temporary use of public lands and other associated land uses, issued under sections 1732, 1761, and 1763 to 1771 of this title, with respect to pre-construction, construction, and initial operation of transportation systems for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until the first anniversary of date of initial operation of the Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§ 102(e), (f), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1764. General requirements

(a) Boundary specifications; criteria; temporary use of additional lands

The Secretary concerned shall specify the boundaries of each right-of-way as precisely as is practical. Each right-of-way shall be limited to the ground which the Secretary concerned determines (1) will be occupied by facilities which constitute the project for which the right-of-way is granted, issued, or renewed, (2) to be necessary for the operation or maintenance of the project, (3) to be necessary to protect the public safety, and (4) will do no unnecessary damage to the environment. The Secretary concerned may authorize the temporary use of such additional lands as he determines to be reasonably necessary for the construction, operation, maintenance, or termination of the project or a portion thereof, or for access thereto.

(b) Terms and conditions of right-of-way or permit

Each right-of-way or permit granted, issued, or renewed pursuant to this section shall be limited to a reasonable term in light of all circumstances concerning the project. In determining the duration of a right-of-way the Secretary concerned shall, among other things, take into consideration the cost of the facility, its useful life, and any public purpose it serves. The right-of-way shall specify whether it is or is not renewable and the terms and conditions applicable to the renewal.

TRANSFER OF FUNCTIONS

See note set out under section 1763 of this title.

§ 1765. Terms and conditions

Each right-of-way shall contain—

(a) terms and conditions which will (i) carry out the purposes of this Act and rules and regulations issued thereunder; (ii) minimize damage to scenic and esthetic values and fish and wildlife habitat and otherwise protect the environment; (iii) require compliance with applicable air and water quality standards established by or pursuant to applicable Federal or State law; and (iv) require compliance with State standards for public health and safety, environmental protection, and siting, construction, operation, and maintenance of or for rights-of-way for similar purposes if those standards are more stringent than applicable Federal standards; and

(b) such terms and conditions as the Secretary concerned deems necessary to (i) protect Federal property and economic interests; (ii) manage efficiently the lands which are subject to the right-of-way or adjacent thereto and protect the other lawful users of the lands adjacent to or traversed by such right-of-way; (iii) protect lives and property; (iv) protect the interests of individuals living in the general area traversed by the right-of-way who rely on the fish, wildlife, and other biotic resources of the area for subsistence purposes; (v) require location of the right-of-way along a route that will cause least damage to the environment, taking into consideration feasibility and other relevant factors; and (vi) otherwise protect the public interest in the lands traversed by the right-of-way or adjacent thereto.

(Pub. L. 94-579, title V, § 505, Oct. 21, 1976, 90 Stat. 2780.)

REFERENCES IN TEXT

This Act, referred to in par. (a), is Pub. L. 94-579, Oct. 21, 1976, 90 Stat. 2743, as amended, known as the Federal Land Policy and Management Act of 1976. For complete classification of this Act to the Code, see Tables.

TRANSFER OF FUNCTIONS

See note set out under section 1763 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1764 of this title.

§ 1766. Suspension or termination; grounds; procedures applicable

Abandonment of a right-of-way or noncompliance with any provision of this subchapter condition of the right-of-way, or applicable rule or regulation of the Secretary concerned may be grounds for suspension or termination of the right-of-way if, after due notice to the holder of the right-of-way and, and [1] with respect to easements, an appropriate administrative proceeding pursuant to section 554 of title 5, the Secretary concerned determines that any such ground exists and that suspension or termination is justified. No administrative proceeding shall be required where the right-of-way by its terms provides that it terminates on the occurrence of a fixed or agreed-upon condition, event, or time. If the Secretary concerned determines that an immediate temporary suspension of activities within a right-of-way for violation of its terms and conditions is necessary to protect public health or safety or the environment, he may abate such activities prior to an administrative proceeding. Prior to commencing any proceeding to suspend or terminate a right-of-way the Secretary concerned shall give written notice to the holder of the grounds for such action and shall give the holder a reasonable time to resume use of the right-of-way or to comply with this subchapter condition, rule, or regulation as the case may be. Failure of the holder of the right-of-way to use the right-of-way for the purpose for which it was granted, issued, or renewed, for any continuous five-year period, shall constitute a rebuttable presumption of abandonment of the right-of-way except that where the failure of the holder to use the right-of-way for the purpose for which it was granted, issued, or renewed for any continuous five-year period is due to circumstances not within the holder's control, the Secretary concerned is not required to commence proceedings to suspend or terminate the right-of-way.

(Pub. L. 94-579, title V, § 506, Oct. 21, 1976, 90 Stat. 2780.)

TRANSFER OF FUNCTIONS

See note set out under section 1763 of this title.

§ 1767. Rights-of-way for Federal departments and agencies

(a) The Secretary concerned may provide under applicable provisions of this subchapter for the use of any department or agency of the United States a right-of-way over, upon, under or through the land administered by him, subject to such terms and conditions as he may impose.

(b) Where a right-of-way has been reserved for the use of any department or agency of the United States, the Secretary shall take no action to terminate, or otherwise limit, that use without the consent of the head of such department or agency.

(Pub. L. 94-579, title V, § 507, Oct. 21, 1976, 90 Stat. 2781.)

TRANSFER OF FUNCTIONS

See note set out under section 1763 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1732 of this title.

§ 1768. Conveyance of lands covered by right-of-way; terms and conditions

If under applicable law the Secretary concerned decides to transfer out of Federal owner-

[1] So in original.

ship any lands covered in whole or in part by a right-of-way, including a right-of-way granted under the Act of November 16, 1973 (87 Stat. 576; 30 U.S.C. 185), the lands may be conveyed subject to the right-of-way; however, if the Secretary concerned determines that retention of Federal control over the right-of-way is necessary to assure that the purposes of this subchapter will be carried out, the terms and conditions of the right-of-way complied with, or the lands protected, he shall (a) reserve to the United States that portion of the lands which lies within the boundaries of the right-of-way, or (b) convey the lands, including that portion within the boundaries of the right-of-way, subject to the right-of-way and reserving to the United States the right to enforce all or any of the terms and conditions of the right-of-way, including the right to renew it or extend it upon its termination and to collect rents.

(Pub. L. 94-579, title V, § 508, Oct. 21, 1976, 90 Stat. 2781.)

REFERENCES IN TEXT

The Act of November 16, 1973, referred to in text, is Pub. L. 93-153, Nov. 16, 1973, 87 Stat. 576. For complete classification of this Act to the Code, see Tables.

TRANSFER OF FUNCTIONS

See note set out under section 1763 of this title.

§ 1769. Existing right-of-way or right-of-use unaffected; exceptions; rights-of-way for railroad and appurtenant communication facilities; applicability of existing terms and conditions

(a) Nothing in this subchapter shall have the effect of terminating any right-of-way or right-of-use heretofore issued, granted, or permitted. However, with the consent of the holder thereof, the Secretary concerned may cancel such a right-of-way or right-of-use and in its stead issue a right-of-way pursuant to the provisions of this subchapter.

(b) When the Secretary concerned issues a right-of-way under this subchapter for a railroad and appurtenant communication facilities in connection with a realinement of a railroad on lands under his jurisdiction by virtue of a right-of-way granted by the United States, he may, when he considers it to be in the public interest and the lands involved are not within an incorporated community and are of approximately equal value, notwithstanding the provisions of this subchapter, provide in the new right-of-way the same terms and conditions as applied to the portion of the existing right-of-way relinquished to the United States with respect to the payment of annual rental, duration of the right-of-way, and the nature of the interest in lands granted. The Secretary concerned or his delegate shall take final action upon all applications for the grant, issue, or renewal of rights-of-way under subsection (b) of this section no later than six months after receipt from the applicant of all information required from the applicant by this subchapter.

(Pub. L. 94-579, title V, § 509, Oct. 21, 1976, 90 Stat. 2781.)

TRANSFER OF FUNCTIONS

See note set out under section 1763 of this title.

§ 1770. Applicability of provisions to other Federal laws

(a) Right-of-way

Effective on and after October 21, 1976, no right-of-way for the purposes listed in this subchapter shall be granted, issued, or renewed over, upon, under, or through such lands except under and subject to the provisions, limitations, and conditions of this subchapter: *Provided*, That nothing in this subchapter shall be construed as affecting or modifying the provisions of sections 532 to 538 of title 16 and in the event of conflict with, or inconsistency between, this subchapter and sections 532 to 538 of title 16, the latter shall prevail: *Provided further*, That nothing in this Act should be construed as making it mandatory that, with respect to forest roads, the Secretary of Agriculture limit rights-of-way grants or their term of years or require disclosure pursuant to section 1761(b) of this title or impose any other condition contemplated by this Act that is contrary to present practices of that Secretary under sections 532 to 538 of title 16. Any pending application for a right-of-way under any other law on the effective date of this section shall be considered as an application under this subchapter. The Secretary concerned may require the applicant to submit any additional information he deems necessary to comply with the requirements of this subchapter.

(b) Highway use

Nothing in this subchapter shall be construed to preclude the use of lands covered by this subchapter for highway purposes pursuant to sections 107 and 317 of title 23.

(c) Application of antitrust laws

(1) Nothing in this subchapter shall be construed as exempting any holder of a right-of-way issued under this subchapter from any provision of the antitrust laws of the United States.

(2) For the purposes of this subsection, the term "antitrust laws" includes the Act of July 2, 1890 (26 Stat. 15 U.S.C. 1 et seq.); the Act of October 15, 1914 (38 Stat. 730, 15 U.S.C. 12 et seq.); the Federal Trade Commission Act (38 Stat. 717; 15 U.S.C. 41 et seq.); and sections 73 and 74 of the Act of August 27, 1894 [15 U.S.C. 8, 9].

(Pub. L. 94-579, title V, § 510, Oct. 21, 1976, 90 Stat. 2782.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), is Pub. L. 94-579, Oct. 21, 1976, 90 Stat. 2743, as amended, known as the Federal Land Policy and Management Act of 1976. For complete classification of this Act to the Code, see Tables.

The effective date of this section, referred to in subsec. (a), probably means the date of enactment of this section by Pub. L. 94-579, which was approved Oct. 21, 1976.

Act of July 2, 1890, referred to in subsec. (c)(2), is act July 2, 1890, ch. 647, 26 Stat. 209, as amended, known as the Sherman Act, which is classified to sections 1 to 7 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1 of Title 15 and Tables.

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Act of October 15, 1914, referred to in subsec. (c)(2), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, known as the Clayton Act, which is classified generally to sections 12, 13, 14 to 19, 20, 21, and 22 to 27 of Title 15, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of Title 15 and Tables.

The Federal Trade Commission Act, referred to in subsec. (c)(2), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of Title 15. For complete classification of this Act to the Code, see section 58 of Title 15 and Tables.

Sections 73 and 74 of the Act of August 27, 1894, referred to in subsec. (c), are sections 73 and 74 of act Aug. 27, 1894, ch. 349, 28 Stat. 570, which are classified to sections 8 and 9 of Title 15.

TRANSFER OF FUNCTIONS

See note set out under section 1763 of this title.

§ 1771. Coordination of applications

Applicants before Federal departments and agencies other than the Department of the Interior or Agriculture seeking a license, certificate, or other authority for a project which involve a right-of-way over, upon, under, or through public land or National Forest System lands must simultaneously apply to the Secretary concerned for the appropriate authority to use public lands or National Forest System lands and submit to the Secretary concerned all information furnished to the other Federal department or agency.

(Pub. L. 94-579, title V, § 511, Oct. 21, 1976, 90 Stat. 2782.)

TRANSFER OF FUNCTIONS

See note set out under section 1763 of this title.

SUBCHAPTER VI—DESIGNATED MANAGEMENT AREAS

§ 1781. California Desert Conservation Area

(a) Congressional findings

The Congress finds that—

(1) the California desert contains historical, scenic, archeological, environmental, biological, cultural, scientific, educational, recreational, and economic resources that are uniquely located adjacent to an area of large population;

(2) the California desert environment is a total ecosystem that is extremely fragile, easily scarred, and slowly healed;

(3) the California desert environment and its resources, including certain rare and endangered species of wildlife, plants, and fishes, and numerous archeological and historic sites, are seriously threatened by air pollution, inadequate Federal management authority, and pressures of increased use, particularly recreational use, which are certain to intensify because of the rapidly growing population of southern California;

(4) the use of all California desert resources can and should be provided for in a multiple use and sustained yield management plant to conserve these resources for future generations, and to provide present and future use and enjoyment, particularly outdoor recreation uses, including the use, where appropriate, of off-road recreational vehicles;

(5) the Secretary has initiated a comprehensive planning process and established an interim management program for the public lands in the California desert; and

(6) to insure further study of the relationship of man and the California desert environment, preserve the unique and irreplaceable resources, including archeological values, and conserve the use of the economic resources of the California desert, the public must be provided more opportunity to participate in such planning and management, and additional management authority must be provided to the Secretary to facilitate effective implementation of such planning and management.

(b) Statement of purpose

It is the purpose of this section to provide for the immediate and future protection and administration of the public lands in the California desert within the framework of a program of multiple use and sustained yield, and the maintenance of environmental quality.

(c) Description of Area

(1) For the purpose of this section, the term "California desert" means the area generally depicted on a map entitled "California Desert Conservation Area—Proposed" dated April 1974, and described as provided in subsection (c)(2) of this section.

(2) As soon as practicable after October 21, 1976, the Secretary shall file a revised map and a legal description of the California Desert Conservation Area with the Committees on Interior and Insular Affairs of the United States Senate and the House of Representatives, and such map and description shall have the same force and effect as if included in this Act. Correction of clerical and typographical errors in such legal description and a map may be made by the Secretary. To the extent practicable, the Secretary shall make such legal description and map available to the public promptly upon request.

(d) Preparation and implementation of comprehensive long-range plan for management, use, etc.

The Secretary, in accordance with section 1712 of this title, shall prepare and implement a comprehensive, long-range plan for the management, use, development, and protection of the public lands within the California Desert Conservation Area. Such plan shall take into account the principles of multiple use and sustained yield in providing for resource use and development, including, but not limited to, maintenance of environmental quality, rights-of-way, and mineral development. Such plan shall be completed and implementation thereof initiated on or before September 30, 1980.

(e) Interim program for management, use, etc.

During the period beginning on October 21, 1976, and ending on the effective date of implementation of the comprehensive, long-range plan, the Secretary shall execute an interim program to manage, use, and protect the public

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lands, and their resources now in danger of destruction, in the California Desert Conservation Area, to provide for the public use of such lands in an orderly and reasonable manner such as through the development of campgrounds and visitor centers, and to provide for a uniformed desert ranger force.

(f) Applicability of mining laws

Subject to valid existing rights, nothing in this Act shall affect the applicability of the United States mining laws on the public lands within the California Desert Conservation Area, except that all mining claims located on public lands within the California Desert Conservation Area shall be subject to such reasonable regulations as the Secretary may prescribe to effectuate the purposes of this section. Any patent issued on any such mining claim shall recite this limitation and continue to be subject to such regulations. Such regulations shall provide for such measures as may be reasonable to protect the scenic, scientific, and environmental values of the public lands of the California Desert Conservation Area against undue impairment, and to assure against pollution of the streams and waters within the California Desert Conservation Area.

(g) Advisory Committee; establishment; functions

(1) The Secretary, within sixty days after October 21, 1976, shall establish a California Desert Conservation Area Advisory Committee (hereinafter referred to as "advisory committee") in accordance with the provisions of section 1739 of this title.

(2) It shall be the function of the advisory committee to advise the Secretary with respect to the preparation and implementation of the comprehensive, long-range plan required under subsection (d) of this section.

(h) Management of lands under jurisdiction of Secretary of Agriculture and Secretary of Defense

The Secretary of Agriculture and the Secretary of Defense shall manage lands within their respective jurisdictions located in or adjacent to the California Desert Conservation Area, in accordance with the laws relating to such lands and wherever practicable, in a manner consonant with the purpose of this section. The Secretary, the Secretary of Agriculture, and the Secretary of Defense are authorized and directed to consult among themselves and take cooperative actions to carry out the provisions of this subsection, including a program of law enforcement in accordance with applicable authorities to protect the archeological and other values of the California Desert Conservation Area and adjacent lands.

(i) Annual report; contents

The Secretary shall report to the Congress no later than two years after October 21, 1976, and annually thereafter, on the progress in, and any problems concerning, the implementation of this section, together with any recommendations, which he may deem necessary to remedy such problems.

(j) Authorization of appropriations

There are authorized to be appropriated for fiscal years 1977 through 1981 not to exceed $40,000,000 for the purpose of this section, such amount to remain available until expended.

(Pub. L. 94-579, title VI, § 601, Oct. 21, 1976, 90 Stat. 2782.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (c)(2) and (f), is Pub. L. 94-579, Oct. 21, 1976, 90 Stat. 2743, as amended, known as the Federal Land Policy and Management Act of 1976. For complete classification of this Act to the Code, see Tables.

The United States mining laws, referred to in subsec. (f), are classified generally to Title 30, Mineral Lands and Mining.

CHANGE OF NAME

The Committee on Interior and Insular Affairs of the Senate, referred to in subsec. (c)(2), was abolished and replaced by the Committee on Energy and Natural Resources of the Senate, effective Feb. 11, 1977. See Rule XXV of the Standing Rules of the Senate, as amended by Senate Resolution 4 (popularly cited as the "Committee System Reorganization Amendments of 1977"), approved Feb. 4, 1977.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1732, 1733 of this title.

§ 1782. Bureau of Land Management Wilderness Study

(a) Lands subject to review and designation as wilderness

Within fifteen years after October 21, 1976, the Secretary shall review those roadless areas of five thousand acres or more and roadless islands of the public lands, identified during the inventory required by section 1711(a) of this title as having wilderness characteristics described in the Wilderness Act of September 3, 1964 (78 Stat. 890; 16 U.S.C. 1131 et seq.) and shall from time to time report to the President his recommendation as to the suitability or nonsuitability of each such area or island for preservation as wilderness: *Provided*, That prior to any recommendations for the designation of an area as wilderness the Secretary shall cause mineral surveys to be conducted by the Geological Survey and the Bureau of Mines to determine the mineral values, if any, that may be present in such areas: *Provided further*, That the Secretary shall report to the President by July 1, 1980, his recommendations on those areas which the Secretary has prior to November 1, 1975, formally identified as natural or primitive areas. The review required by this subsection shall be conducted in accordance with the procedure specified in section 3(d) of the Wilderness Act [16 U.S.C. 1132(d)].

(b) Presidential recommendation for designation as wilderness

The President shall advise the President of the Senate and the Speaker of the House of Representatives of his recommendations with respect to designation as wilderness of each such area, together with a map thereof and a definition of its boundaries. Such advice by the President shall be given within two years of the receipt of each report from the Secretary. A recommendation of the President for designa-

tion as wilderness shall become effective only if so provided by an Act of Congress.

(c) Status of lands during period of review and determination

During the period of review of such areas and until Congress has determined otherwise, the Secretary shall continue to manage such lands according to his authority under this Act and other applicable law in a manner so as not to impair the suitability of such areas for preservation as wilderness, subject, however, to the continuation of existing mining and grazing uses and mineral leasing in the manner and degree in which the same was being conducted on October 21, 1976: *Provided*, That, in managing the public lands the Secretary shall by regulation or otherwise take any action required to prevent unnecessary or undue degradation of the lands and their resources or to afford environmental protection. Unless previously withdrawn from appropriation under the mining laws, such lands shall continue to be subject to such appropriation during the period of review unless withdrawn by the Secretary under the procedures of section 1714 of this title for reasons other than preservation of their wilderness character. Once an area has been designated for preservation as wilderness, the provisions of the Wilderness Act [16 U.S.C. 1131 et seq.] which apply to national forest wilderness areas shall apply with respect to the administration and use of such designated area, including mineral surveys required by section 4(d)(2) of the Wilderness Act [16 U.S.C. 1133(d)(2)], and mineral development, access, exchange of lands, and ingress and egress for mining claimants and occupants.

(Pub. L. 94-579, title VI, § 603, Oct. 21, 1976, 90 Stat. 2785.)

REFERENCES IN TEXT

The Wilderness Act of September 3, 1964, referred to in subsecs. (a) and (c), is Pub. L. 88-577, Sept. 3, 1964, 78 Stat. 890, as amended, which is classified generally to chapter 23 (§ 1131 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1131 of Title 16 and Tables.

This Act, referred to in subsec. (c), is Pub. L. 94-579, Oct. 21, 1976, 90 Stat. 2743, as amended, known as the Federal Land Policy and Management Act of 1976. For complete classification of this Act to the Code, see Tables.

The mining laws, referred to in subsec. (c), are classified generally to Title 30, Mineral Lands and Mining.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1702, 1732, 1784 of this title; title 25 section 640d-26; title 42 section 6508.

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AMERICAN INDIAN RELIGIOUS FREEDOM ACT OF 1978
42 U.S.C. 1996, P.L. 95-341, 92 STAT. 469

§ 1996. Protection and preservation of traditional religions of Native Americans

On and after August 11, 1978, it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites.

(Pub. L. 95-341, § 1, Aug. 11, 1978, 92 Stat. 469.)

SHORT TITLE

Pub. L. 95-341, which enacted this section and a provision set out as a note under this section, is popularly known as the American Indian Religious Freedom Act.

FEDERAL IMPLEMENTATION OF PROTECTIVE AND PRESERVATION FUNCTIONS RELATING TO NATIVE AMERICAN RELIGIOUS CULTURAL RIGHTS AND PRACTICES; PRESIDENTIAL REPORT TO CONGRESS

Section 2 of Pub. L. 95-341 provided that the President direct the various Federal departments, agencies, and other instrumentalities responsible for administering relevant laws to evaluate their policies and procedures in consultation with native traditional religious leaders to determine changes necessary to preserve Native American religious cultural rights and practices and report to the Congress 12 months after Aug. 11, 1978.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 16 section 470ii.

ARCHAEOLOGICAL RESOURCES PROTECTION ACT OF 1979
16 U.S.C. 470aa, P.L. 96-95, 93 STAT. 721
and 43 CFR Part 7

TITLE 16—CONSERVATION

CHAPTER 1B—ARCHAEOLOGICAL RESOURCES PROTECTION

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CHAPTER REFERRED TO IN OTHER SECTIONS

265 This chapter is referred to in section 470a of this title.

(b) The purpose of this chapter is to secure, for the present and future benefit of the American people, the protection of archaeological resources and sites which are on public lands and Indian lands, and to foster increased cooperation and exchange of information between governmental authorities, the professional archaeological community, and private individuals having collections of archaeological resources and data which were obtained before October 31, 1979.

(Pub. L. 96-95, § 2, Oct. 31, 1979, 93 Stat. 721.)

SHORT TITLE

Section 1 of Pub. L. 96-95 provided that: "This Act [enacting this chapter] may be cited as the 'Archaeological Resources Protection Act of 1979'."

§ 470bb. Definitions

As used in this chapter—

(1) The term "archaeological resource" means any material remains of past human life or activities which are of archaeological interest, as determined under uniform regulations promulgated pursuant to this chapter. Such regulations containing such determination shall include, but not be limited to: pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human skeletal materials, or any portion or piece of any of the foregoing items. Nonfossilized and fossilized paleontological specimens, or any portion or piece thereof, shall not be considered archaeological resources, under the regulations under this paragraph, unless found in archaeological context. No item shall be treated as an archaeological resource under regulations under this paragraph unless such item is at least 100 years of age.

(2) The term "Federal land manager" means, with respect to any public lands, the Secretary of the department, or the head of any other agency or instrumentality of the United States, having primary management authority over such lands. In the case of any public lands or Indian lands with respect to which no department, agency, or instrumentality has primary management authority, such term means the Secretary of the Interior. If the Secretary of the Interior consents, the responsibilities (in whole or in part) under this chapter of the Secretary of any department (other than the Department of the Interior) or the head of any other agency or instrumentality may be delegated to the Secretary of the Interior with respect to any land managed by such other Secretary or agency head, and in any such case, the term "Federal land manager" means the Secretary of the Interior.

(3) The term "public lands" means—

(A) lands which are owned and administered by the United States as part of—

(i) the national park system,

(ii) the national wildlife refuge system, or

(iii) the national forest system; and

§ 470aa. Congressional findings and declaration of purpose

(a) The Congress finds that—

(1) archaeological resources on public lands and Indian lands are an accessible and irreplaceable part of the Nation's heritage;

(2) these resources are increasingly endangered because of their commercial attractiveness;

(3) existing Federal laws do not provide adequate protection to prevent the loss and destruction of these archaeological resources and sites resulting from uncontrolled excavations and pillage; and

(4) there is a wealth of archaeological information which has been legally obtained by private individuals for noncommercial purposes and which could voluntarily be made available to professional archaeologists and institutions.

(B) all other lands the fee title to which is held by the United States, other than lands on the Outer Continental Shelf and lands which are under the jurisdiction of the Smithsonian Institution; [1]

(4) The term "Indian lands" means lands of Indian tribes, or Indian individuals, which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States, except for any subsurface interests in lands not owned or controlled by an Indian tribe or an Indian individual.

(5) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 et seq.].

(6) The term "person" means an individual, corporation, partnership, trust, institution, association, or any other private entity or any officer, employee, agent, department, or instrumentality of the United States, of any Indian tribe, or of any State or political subdivision thereof.

(7) The term "State" means any of the fifty States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

(Pub. L. 96-95, § 3, Oct. 31, 1979, 93 Stat. 721.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in par. (5), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 470ii of this title.

§ 470cc. Excavation and removal

(a) Application for permit

Any person may apply to the Federal land manager for a permit to excavate or remove any archaeological resource located on public lands or Indian lands and to carry out activities associated with such excavation or removal. The application shall be required, under uniform regulations under this chapter, to contain such information as the Federal land manager deems necessary, including information concerning the time, scope, and location and specific purpose of the proposed work.

(b) Determinations by Federal land manager prerequisite to issuance of permit

A permit may be issued pursuant to an application under subsection (a) of this section if the Federal land manager determines, pursuant to uniform regulations under this chapter, that—

(1) the applicant is qualified, to carry out the permitted activity,

(2) the activity is undertaken for the purpose of furthering archaeological knowledge in the public interest,

(3) the archaeological resources which are excavated or removed from public lands will remain the property of the United States, and such resources and copies of associated archaeological records and data will be preserved by a suitable university, museum, or other scientific or educational institution, and

(4) the activity pursuant to such permit is not inconsistent with any management plan applicable to the public lands concerned.

(c) Notification to Indian tribes of possible harm to or destruction of sites having religious or cultural importance

If a permit issued under this section may result in harm to, or destruction of, any religious or cultural site, as determined by the Federal land manager, before issuing such permit, the Federal land manager shall notify any Indian tribe which may consider the site as having religious or cultural importance. Such notice shall not be deemed a disclosure to the public for purposes of section 470hh of this title.

(d) Terms and conditions of permit

Any permit under this section shall contain such terms and conditions, pursuant to uniform regulations promulgated under this chapter, as the Federal land manager concerned deems necessary to carry out the purposes of this chapter.

(e) Identification of individuals responsible for complying with permit terms and conditions and other applicable laws

Each permit under this section shall identify the individual who shall be responsible for carrying out the terms and conditions of the permit and for otherwise complying with this chapter and other law applicable to the permitted activity.

(f) Suspension or revocation of permits; grounds

Any permit issued under this section may be suspended by the Federal land manager upon his determination that the permittee has violated any provision of subsection (a), (b), or (c) of section 470ee of this title. Any such permit may be revoked by such Federal land manager upon assessment of a civil penalty under section 470ff of this title against the permittee or upon the permittee's conviction under section 470ee of this title.

(g) Excavation or removal by Indian tribes or tribe members; excavation or removal of resources located on Indian lands

(1) No permit shall be required under this section or under the Act of June 8, 1906 (16 U.S.C. 431), for the excavation or removal by any Indian tribe or member thereof of any archaeological resource located on Indian lands of such Indian tribe, except that in the absence of tribal law regulating the excavation or removal of archaeological resources on Indian lands, an individual tribal member shall be required to obtain a permit under this section.

(2) In the case of any permits for the excavation or removal of any archaelogical resource located on Indian lands, the permit may be granted only after obtaining the consent of the

[1] So in original. Probably should be a period.

Indian or Indian tribe owning or having jurisdiction over such lands. The permit shall include such terms and conditions as may be requested by such Indian or Indian tribe.

(h) Permits issued under Antiquities Act of 1906

(1) No permit or other permission shall be required under the Act of June 8, 1906 (16 U.S.C. 431-433), for any activity for which a permit is issued under this section.

(2) Any permit issued under the Act of June 8, 1906 [16 U.S.C. 431-433], shall remain in effect according to its terms and conditions following the enactment of this chapter. No permit under this chapter shall be required to carry out any activity under a permit issued under the Act of June 8, 1906, before October 31, 1979, which remains in effect as provided in this paragraph, and nothing in this chapter shall modify or affect any such permit.

(i) Compliance with provisions relating to undertakings on property listed in the National Register not required

Issuance of a permit in accordance with this section and applicable regulations shall not require compliance with section 470f of this title.

(j) Issuance of permits to State Governors for archaeological activities on behalf of States or their educational institutions

Upon the written request of the Governor of any State, the Federal land manager shall issue a permit, subject to the provisions of subsections (b)(3), (b)(4), (c), (e), (f), (g), (h), and (i) of this section for the purpose of conducting archaeological research, excavation, removal, and curation, on behalf of the State or its educational institutions, to such Governor or to such designee as the Governor deems qualified to carry out the intent of this chapter.

(Pub. L. 96-95, § 4, Oct. 31, 1979, 93 Stat. 722.)

REFERENCES IN TEXT

The Act of June 8, 1906, referred to in subsecs. (g)(1) and (h), is act June 8, 1906, ch. 3060, 34 Stat. 225, known as the Antiquities Act of 1906, which is classified generally to sections 431, 432 and 433 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 431 of this title and Tables.

Following the enactment of this chapter, referred to in subsec. (h)(2), means following the enactment of Pub. L. 96-95, approved Oct. 31, 1979.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 470ee of this title.

§ 470dd. Custody of archaeological resources

The Secretary of the Interior may promulgate regulations providing for—

(1) the exchange, where appropriate, between suitable universities, museums, or other scientific or educational institutions, of archaeological resources removed from public lands and Indian lands pursuant to this chapter, and

(2) the ultimate disposition of such resources and other resources removed pursuant to the Act of June 27, 1960 (16 U.S.C. 469-469c) [16 U.S.C. 469-469c-1] or the Act of June 8, 1906 (16 U.S.C. 431-433).

Any exchange or ultimate disposition under such regulation of archaeological resources excavated or removed from Indian lands shall be subject to the consent of the Indian or Indian tribe which owns or has jurisdiction over such lands. Following promulgation of regulations under this section, notwithstanding any other provision of law, such regulations shall govern the disposition of archaeological resources removed from public lands and Indian lands pursuant to this chapter.

(Pub. L. 96-95, § 5, Oct. 31, 1979, 93 Stat. 724.)

REFERENCES IN TEXT

The Act of June 27, 1960 (16 U.S.C. 469-469c), referred to in par. (2), is act June 27, 1960, Pub. L. 86-523, 74 Stat. 220, as amended, which is classified generally to sections 469 to 469c-1 of this title. For complete classification of this Act to the Code, see Tables.

The Act of June 8, 1906 (16 U.S.C. 431-433), referred to in par. (2), is act June 8, 1906, ch. 3060, 34 Stat. 225, known as the Antiquities Act of 1906, which is classified generally to sections 431, 432 and 433 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 431 of this title and Tables.

§ 470ee. Prohibited acts and criminal penalties

(a) Unauthorized excavation, removal, damage, alteration, or defacement of archaeological resources

No person may excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public lands or Indian lands unless such activity is pursuant to a permit issued under section 470cc of this title, a permit referred to in section 470cc(h)(2) of this title, or the exemption contained in section 470cc(g)(1) of this title.

(b) Trafficking in archaeological resources the excavation or removal of which was wrongful under Federal law

No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange any archaeological resource if such resource was excavated or removed from public lands or Indian lands in violation of—

(1) the prohibition contained in subsection (a) of this section, or

(2) any provision, rule, regulation, ordinance, or permit in effect under any other provision of Federal law.

(c) Trafficking in interstate or foreign commerce in archaeological resources the excavation, removal, sale, purchase, exchange, transportation or receipt of which was wrongful under State or local law

No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange, in interstate or foreign commerce, any archaeological resource excavated, removed, sold, purchased, exchanged, transported, or received in violation of any provision, rule, regulation, ordinance, or permit in effect under State or local law.

(d) Penalties

Any person who knowingly violates, or counsels, procures, solicits, or employs any other

person to violate, any prohibition contained in subsection (a), (b), or (c) of this section shall, upon conviction, be fined not more than $10,000 or imprisoned not more than one year, or both: *Provided, however,* That if the commercial or archaeological value of the archaeological resources involved and the cost of restoration and repair of such resources exceeds the sum of $5,000, such person shall be fined not more than $20,000 or imprisoned not more than two years, or both. In the case of a second or subsequent such violation upon conviction such person shall be fined not more than $100,000, or imprisoned not more than five years, or both.

(e) Effective date

The prohibitions contained in this section shall take effect on October 31, 1979.

(f) Prospective application

Nothing in subsection (b)(1) of this section shall be deemed applicable to any person with respect to an archaeological resource which was in the lawful possession of such person prior to October 31, 1979.

(g) Removal of arrowheads located on ground surface

Nothing in subsection (d) of this section shall be deemed applicable to any person with respect to the removal of arrowheads located on the surface of the ground.

(Pub. L. 96-95, § 6, Oct. 31, 1979, 93 Stat. 724.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 470cc, 470gg of this title.

§ 470ff. Civil penalties

(a) Assessment by Federal land manager

(1) Any person who violates any prohibition contained in an applicable regulation or permit issued under this chapter may be assessed a civil penalty by the Federal land manager concerned. No penalty may be assessed under this subsection unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be remitted or mitigated by the Federal land manager concerned.

(2) The amount of such penalty shall be determined under regulations promulgated pursuant to this chapter, taking into account, in addition to other factors—

(A) the archaeological or commercial value of the archaeological resource involved, and

(B) the cost of restoration and repair of the resource and the archaeological site involved.

Such regulations shall provide that, in the case of a second or subsequent violation by any person, the amount of such civil penalty may be double the amount which would have been assessed if such violation were the first violation by such person. The amount of any penalty assessed under this subsection for any violation shall not exceed an amount equal to double the cost of restoration and repair of resources and archaeological sites damaged and double the fair market value of resources destroyed or not recovered.

(3) No penalty shall be assessed under this section for the removal of arrowheads located on the surface of the ground.

(b) Judicial review of assessed penalties; collection of unpaid assessments

(1) Any person aggrieved by an order assessing a civil penalty under subsection (a) of this section may file a petition for judicial review of such order with the United States District Court for the District of Columbia or for any other district in which such a person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued. The court shall hear such action on the record made before the Federal land manager and shall sustain his action if it is supported by substantial evidence on the record considered as a whole.

(2) If any person fails to pay an assessment of a civil penalty—

(A) after the order making the assessment has become a final order and such person has not filed a petition for judicial review of the order in accordance with paragraph (1), or

(B) after a court in an action brought under paragraph (1) has entered a final judgment upholding the assessment of a civil penalty,

the Federal land managers may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. In such action, the validity and amount of such penalty shall not be subject to review.

(c) Hearings

Hearings held during proceedings for the assessment of civil penalties authorized by subsection (a) of this section shall be conducted in accordance with section 554 of title 5. The Federal land manager may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Federal land manager or to appear and produce documents before the Federal land manager, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(Pub. L. 96-95, § 7, Oct. 31, 1979, 93 Stat. 725.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 470cc, 470gg of this title.

§ 470gg. Enforcement

(a) Rewards

Upon the certification of the Federal land manager concerned, the Secretary of the Treasury is directed to pay from penalties and fines collected under sections 470ee and 470ff of this title an amount equal to one-half of such penalty or fine, but not to exceed $500, to any person who furnishes information which leads to the finding of a civil violation, or the conviction of criminal violation, with respect to which such penalty or fine was paid. If several persons provided such information, such amount shall be divided among such persons. No officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall be eligible for payment under this subsection.

(b) Forfeitures

All archaeological resources with respect to which a violation of subsection (a), (b), or (c) of section 470ee of this title occurred and which are in the possession of any person, and all vehicles and equipment of any person which were used in connection with such violation, may be (in the discretion of the court or administrative law judge, as the case may be) subject to forfeiture to the United States upon—

(1) such person's conviction of such violation under section 470ee of this title,

(2) assessment of a civil penalty against such person under section 470ff of this title with respect to such violation, or

(3) a determination by any court that such archaeological resources, vehicles, or equipment were involved in such violation.

(c) Disposition of penalties collected and items forfeited in cases involving archaeological resources excavated or removed from Indian lands

In cases in which a violation of the prohibition contained in subsection (a), (b), or (c) of section 470ee of this title involve archaeological resources excavated or removed from Indian lands, the Federal land manager or the court, as the case may be, shall provide for the payment to the Indian or Indian tribe involved of all penalties collected pursuant to section 470ff of this title and for the transfer to such Indian or Indian tribe of all items forfeited under this section.

(Pub. L. 96-95, § 8, Oct. 31, 1979, 93 Stat. 726.)

§ 470hh. Confidentiality of information concerning nature and location of archaeological resources

(a) Disclosure of information

Information concerning the nature and location of any archaeological resource for which the excavation or removal requires a permit or other permission under this chapter or under any other provision of Federal law may not be made available to the public under subchapter II of chapter 5 of title 5 or under any other provision of law unless the Federal land manager concerned determines that such disclosure would—

(1) further the purposes of this chapter or the Act of June 27, 1960 (16 U.S.C. 469-469c) [16 U.S.C. 469-469c-1], and

(2) not create a risk of harm to such resources or to the site at which such resources are located.

(b) Request for disclosure by Governors

Notwithstanding the provisions of subsection (a) of this section, upon the written request of the Governor of any State, which request shall state—

(1) the specific site or area for which information is sought,

(2) the purpose for which such information is sought,

(3) a commitment by the Governor to adequately protect the confidentiality of such information to protect the resource from commercial exploitation,

the Federal land manager concerned shall provide to the Governor information concerning the nature and location of archaeological resources within the State of the requesting Governor.

(Pub. L. 96-95, § 9, Oct. 31, 1979, 93 Stat. 727.)

REFERENCES IN TEXT

The Act of June 27, 1960 (16 U.S.C. 469-469c), referred to in subsec. (a)(1), is act June 27, 1960, Pub. L. 86-523, 74 Stat. 220, as amended, which is classified generally to sections 469 to 469c-1 of this title. For complete classification of this Act to the Code, see Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 470cc of this title.

§ 470ii. Rules and regulations; intergovernmental coordination

(a) Promulgation; effective date

The Secretaries of the Interior, Agriculture and Defense and the Chairman of the Board of the Tennessee Valley Authority, after consultation with other Federal land managers, Indian tribes, representatives of concerned State agencies, and after public notice and hearing, shall promulgate such uniform rules and regulations as may be appropriate to carry out the purposes of this chapter. Such rules and regulations may be promulgated only after consideration of the provisions of the American Indian Religious Freedom Act (92 Stat. 469; 42 U.S.C. 1996). Each uniform rule or regulation promulgated under this chapter shall be submitted on the same calendar day to the Committee on Energy and Natural Resources of the United States Senate and to the Committee on Interior and Insular Affairs of the United States House of Representatives, and no such uniform rule or regulation may take effect before the expiration of a period of ninety calendar days following the date of its submission to such Committees.

(b) Federal land managers' rules

Each Federal land manager shall promulgate such rules and regulations, consistent with the uniform rules and regulations under subsection (a) of this section, as may be appropriate for the carrying out of his functions and authorities under this chapter.

(Pub. L. 96-95, § 10, Oct. 31, 1979, 93 Stat. 727.)

§ 470jj. Cooperation with private individuals

The Secretary of the Interior shall take such action as may be necessary, consistent with the purposes of this chapter, to foster and improve the communication, cooperation, and exchange of information between—

(1) private individuals having collections of archaeological resources and data which were obtained before the date of the enactment of this chapter, and

(2) Federal authorities responsible for the protection of archaeological resources on the public lands and Indian lands and professional archaeologists and associations of professional archaeologists.

In carrying out this section, the Secretary shall, to the extent practicable and consistent with the provisions of this chapter, make efforts to expand the archaeological data base for the archaeological resources of the United States through increased cooperation between private individuals referred to in paragraph (1) and professional archaeologists and archaeological organizations.

(Pub. L. 96-95, § 11, Oct. 31, 1979, 93 Stat. 727.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 470*ll* of this title.

§ 470kk. Savings provisions

(a) Mining, mineral leasing, reclamation, and other multiple uses

Nothing in this chapter shall be construed to repeal, modify, or impose additional restrictions on the activities permitted under existing laws and authorities relating to mining, mineral leasing, reclamation, and other multiple uses of the public lands.

(b) Private collections

Nothing in this chapter applies to, or requires a permit for, the collection for private purposes of any rock, coin, bullet, or mineral which is not an archaeological resource, as determined under uniform regulations promulgated under section 470bb(1) of this title.

(c) Lands within chapter

Nothing in this chapter shall be construed to affect any land other than public land or Indian land or to affect the lawful recovery, collection, or sale of archaeological resources from land other than public land or Indian land.

(Pub. L. 96-95, § 12, Oct. 31, 1979, 93 Stat. 728.)

§ 470ll. Annual report to Congress

As part of the annual report required to be submitted to the specified committees of the Congress pursuant to section 469a-3(c) of this title, the Secretary of the Interior shall comprehensively report as a separate component on the activities carried out under the provisions of this chapter, and he shall make such recommendations as he deems appropriate as to changes or improvements needed in the provisions of this chapter. Such report shall include a brief summary of the actions undertaken by the Secretary under section 470jj of this title, relating to cooperation with private individuals.

(Pub. L. 96-95, § 13, Oct. 31, 1979, 93 Stat. 728.)

43 CFR Part 7

PART 7—PROTECTION OF ARCHAEOLOGICAL RESOURCES: UNIFORM REGULATIONS

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AUTHORITY: Pub. L. 96-95, 93 Stat. 721 (16 U.S.C. 470aa *11*) (Sec. 10(a)). Related authority: Pub. L. 59-209, 34 Stat. 225 (16 U.S.C. 432, 433); Pub. L. 86-523, 74 Stat. 220, 221 (16 U.S.C. 469), as amended, 88 Stat. 174 (1974); Pub. L. 89-665, 80 Stat. 915 (16 U.S.C. 470a-t), as amended, 84 Stat. 204 (1970), 87 Stat. 139 (1973), 90 Stat. 1320 (1976), 92 Stat. 3467 (1978), 94 Stat. 2987 (1980); Pub. L. 95-341, 92 Stat. 469 (42 U.S.C. 1996).

SOURCE: 49 FR 1027, Jan. 6, 1984, unless otherwise noted.

§ 7.1 Purpose.

(a) The regulations in this part implement provisions of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa-*11*) by establishing the uniform definitions, standards, and procedures to be followed by all Federal land managers in providing protection for archaeological resources, located on public lands and Indian lands of the United States. These regulations enable Federal land managers to protect archaeological resources, taking into consideration provisions of the American Indian Religious Freedom Act (92 Stat. 469; 42 U.S.C. 1996), through permits authorizing excavation and/or removal of archaeological resources, through civil penalties for unauthorized excavation and/or removal, through provisions for the preservation of archaeological resource collections and data, and through provisions for ensuring confidentiality of information about archaeological resources when disclosure would threaten the archaeological resources.

(b) The regulations in this part do not impose any new restrictions on activities permitted under other laws, authorities, and regulations relating to mining, mineral leasing, reclamation, and other multiple uses of the public lands.

§ 7.2 Authority.

(a) The regulations in this part are promulgated pursuant to section 10(a) of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470ii), which requires that the Secretaries of the Interior, Agriculture and Defense and the Chairman of the Board of the Tennessee Valley Authority jointly develop uniform rules and regulations for carrying out the purposes of the Act.

(b) In addition to the regulations in this part, section 10(b) of the Act (16 U.S.C. 470ii) provides that each Federal land manager shall promulgate such rules and regulations, consistent with the uniform rules and regulations in this part, as may be necessary for carrying out the purposes of the Act.

§ 7.3 Definitions.

As used for purposes of this part:

(a) "Archaeological resource" means any material remains of human life or activities which are at least 100 years of age, and which are of archaeological interest.

(1) "Of archaeological interest" means capable of providing scientific or humanistic understandings of past human behavior, cultural adaptation, and related topics through the application of scientific or scholarly techniques such as controlled observation, contextual measurement, controlled collection, analysis, interpretation and explanation.

(2) "Material remains" means physical evidence of human habitation, occupation, use, or activity, including the site, location, or context in which such evidence is situated.

(3) The following classes of material remains (and illustrative examples), if they are at least 100 years of age, are of archaeological interest and shall be considered archaeological resources unless determined otherwise pursuant to paragraph (a)(4) or (a)(5) of this section:

(i) Surface or subsurface structures, shelters, facilities, or features (including, but not limited to, domestic structures, storage structures, cooking structures, ceremonial structures, artificial mounds, earthworks, fortifications, canals, reservoirs, horticultural/agricultural gardens or fields, bedrock mortars or grinding surfaces, rock alignments, cairns, trails, borrow pits, cooking pits, refuse pits, burial pits or graves, hearths, kilns, post molds, wall trenches, middens);

(ii) Surface or subsurface artifact concentrations or scatters;

(iii) Whole or fragmentary tools, implements, containers, weapons and weapon projectiles, clothing, and ornaments (including, but not limited to, pottery and other ceramics, cordage, basketry and other weaving, bottles and other glassware, bone, ivory, shell, metal, wood, hide, feathers, pigments, and flaked, ground, or pecked stone);

(iv) By-products, waste products, or debris resulting from manufacture or use of human-made or natural materials;

(v) Organic waste (including, but not limited to, vegetal and animal remains, coprolites);

(vi) Human remains (including, but not limited to, bone, teeth, mummified flesh, burials, cremations);

(vii) Rock carvings, rock paintings, intaglios and other works of artistic or symbolic representation;

(viii) Rockshelters and caves or portions thereof containing any of the above material remains;

(ix) All portions of shipwrecks (including, but not limited to, armaments, apparel, tackle, cargo);

(x) Any portion or piece of any of the foregoing.

(4) The following material remains shall not be considered of archaeological interest, and shall not be considered to be archaeological resources for purposes of the Act and this part, unless found in a direct physical relationship with archaeological resources as defined in this section:

(i) Paleontological remains;

(ii) Coins, bullets, and unworked minerals and rocks.

(5) The Federal land manager may determine that certain material remains, in specified areas under the Federal land manager's jurisdiction, and under specified circumstances, are not or are no longer of archaeological interest and are not to be considered archaeological resources under this part. Any determination made pursuant to this subparagraph shall be documented. Such determination shall in no way affect the Federal land manager's obligations under other applicable laws or regulations.

(b) "Arrowhead" means any projectile point which appears to have been designed for use with an arrow.

(c) "Federal land manager" means:

(1) With respect to any public lands, the secretary of the department, or the head of any other agency or instrumentality of the United States, having primary management authority over such lands, including persons to whom such management authority has been officially delegated;

(2) In the case of Indian lands, or any public lands with respect to which no department, agency or instrumentality has primary management authority, such term means the Secretary of the Interior;

(3) The Secretary of the Interior, when the head of any other agency or instrumentality has, pursuant to section 3(2) of the Act and with the consent of the Secretary of the Interior, delegated to the Secretary of the Interior the responsibilities (in whole or in part) in this part.

(d) "Public lands" means:

(1) Lands which are owned and administered by the United States as part of the national park system, the national wildlife refuge system, or the national forest system; and

(2) All other lands the fee title to which is held by the United States, except lands on the Outer Continental Shelf, lands under the jurisdiction of the Smithsonian Institution, and Indian lands.

(e) "Indian lands" means lands of Indian tribes, or Indian individuals, which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States, except for subsurface interests not owned or controlled by an Indian tribe or Indian individual.

(f) "Indian tribe" as defined in the Act means any Indian tribe, band, nation, or other organized group or community, including any Alaska village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (85 Stat. 688). In order to clarify this statutory definition for purposes of this part, "Indian tribe" means:

(1) Any tribal entity which is included in the annual list of recognized tribes published in the FEDERAL REGISTER by the Secretary of the Interior pursuant to 25 CFR Part 54;

(2) Any other tribal entity acknowledged by the Secretary of the Interior pursuant to 25 CFR Part 54 since the most recent publication of the annual list; and

(3) Any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and any Alaska Native village or tribe which is recognized by the Secretary of the Interior as eligible for services provided by the Bureau of Indian Affairs.

(g) "Person" means an individual, corporation, partnership, trust, institution, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the United States, or of any Indian tribe, or of any State or political subdivision thereof.

(h) "State" means any of the fifty states, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

(i) "Act" means the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa-*11*.).

[49 FR 1027, Jan. 6, 1984; 49 FR 5923, Feb. 16, 1984]

§ 7.4 Prohibited acts.

(a) No person may excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public lands or Indian lands unless such activity is pursuant to a permit issued under § 7.8 or exempted by § 7.5(b) of this part.

(b) No person may sell, purchase, exchange, transport, or receive any archaeological resource, if such resource was excavated or removed in violation of:

(1) The prohibitions contained in paragraph (a) of this section; or

(2) Any provision, rule, regulation, ordinance, or permit in effect under any other provision of Federal law.

§ 7.5 Permit requirements and exceptions.

(a) Any person proposing to excavate and/or remove archaeological resources from public lands or Indian lands, and to carry out activities associated with such excavation and/or removal, shall apply to the Federal land manager for a permit for the proposed work, and shall not begin the proposed work until a permit has been issued. The Federal land manager may issue a permit to any qualified person, subject to appropriate terms and conditions, provided that the person applying for a permit meets conditions in § 7.8(a) of this part.

(b) Exceptions:

(1) No permit shall be required under this part for any person conducting activities on the public lands under other permits, leases, licenses, or entitlements for use, when those activities are exclusively for purposes other than the excavation and/or removal of archaeological resources, even though those activities might incidentally result in the disturbance of archaeological resources. General earth-moving excavation conducted under a permit or other authorization shall not be construed to mean excavation and/or removal as used in this part. This exception does not, however, affect the Federal land manager's responsibility to comply with other authorities which protect archaeological resources prior to approving permits, leases, licenses, or entitlements for use; any excavation and/or removal of archaeological resources required for compliance with those authorities shall be conducted in accordance with the permit requirements of this part.

(2) No permit shall be required under this part for any person collecting for private purposes any rock, coin, bullet, or mineral which is not an archaeological resource as defined in this part, provided that such collecting does not result in disturbance of any archaeological resource.

(3) No permit shall be required under this part or under section 3 of the Act of June 8, 1906 (16 U.S.C. 432), for the excavation or removal by any Indian tribe or member thereof of any archaeological resource located on Indian lands of such Indian tribe, except that in the absence of tribal law regulating the excavation or removal or archaeological resources on Indian lands, an individual tribal member shall be required to obtain a permit under this part;

(4) No permit shall be required under this part for any person to carry out any archaeological activity authorized by a permit issued under section 3 of the Act of June 8, 1906 (16 U.S.C. 432), before the enactment of the Archaeological Resources Protection Act of 1979. Such permit shall remain in effect according to its terms and conditions until expiration.

(5) No permit shall be required under section 3 of the Act of June 8, 1906 (16 U.S.C. 432) for any archaeological work for which a permit is issued under this part.

(c) Persons carrying out official agency duties under the Federal land manager's direction, associated with the management of archaeological resources, need not follow the permit application procedures of § 7.6. However, the Federal land manager shall insure that provisions of §§ 7.8 and 7.9 have been met by other documented means, and that any official duties which might result in harm to or destruction of any Indian tribal religious or cultural site, as determined by the Federal

land manager, have been the subject of consideration under § 7.7.

(d) Upon the written request of the Governor of any State, on behalf of the State or its educational institutions, the Federal land manager shall issue a permit, subject to the provisions of §§ 7.5(b)(5), 7.7, 7.8(a) (3), (4), (5), (6), and (7), 7.9, 7.10, 7.12, and 7.13(a) to such Governor or to such designee as the Governor deems qualified to carry out the intent of the Act, for purposes of conducting archaeological research, excavating and/or removing archaeological resources, and safeguarding and preserving any materials and data collected in a university, museum, or other scientific or educational institution approved by the Federal land manager.

(e) Under other statutory, regulatory, or administrative authorities governing the use of public lands and Indian lands, authorizations may be required for activities which do not require a permit under this part. Any person wishing to conduct on public lands or Indian lands any activities related to but believed to fall outside the scope of this part should consult with the Federal land manager, for the purpose of determining whether any authorization is required, prior to beginning such activities.

§ 7.6 Application for permits and information collection.

(a) Any person may apply to the appropriate Federal land manager for a permit to excavate and/or remove archaeological resources from public lands or Indian lands and to carry out activities associated with such excavation and/or removal.

(b) Each application for a permit shall include:

(1) The nature and extent of the work proposed, including how and why it is proposed to be conducted, proposed time of performance, locational maps, and proposed outlet for public written dissemination of the results.

(2) The name and address of the individual(s) proposed to be responsible for conducting the work, institutional affiliation, if any, and evidence of education, training, and experience in accord with the minimal qualifications listed in § 7.8(a).

(3) The name and address of the individual(s), if different from the individual(s) named in paragraph (b)(2) of this section, proposed to be responsible for carrying out the terms and conditions of the permit.

(4) Evidence of the applicant's ability to initiate, conduct, and complete the proposed work, including evidence of logistical support and laboratory facilities.

(5) Where the application is for the excavation and/or removal of archaeological resources on public lands, the names of the university, museum, or other scientific or educational institution in which the applicant proposes to store all collections, and copies of records, data, photographs, and other documents derived from the proposed work. Applicants shall submit written certification, signed by an authorized official of the institution, of willingness to assume curatorial responsibility for the collections, records, data, photographs and other documents and to safeguard and preserve these materials as property of the United States.

(6) Where the application is for the excavation and/or removal of archaeological resources on Indian lands, the name of the university, museum, or other scientific or educational institution in which the applicant proposes to store copies of records, data, photographs, and other documents derived from the proposed work, and all collections in the event the Indian owners do not wish to take custody or otherwise dispose of the archaeological resources. Applicants shall submit written certification, signed by an authorized official of the institution, or willingness to assume curatorial responsibility for the collections, if applicable, and/or the records, data, photographs, and other documents derived from the proposed work.

(c) The Federal land manager may require additional information, pertinent to land management responsibilities, to be included in the application for permit and shall so inform the applicant.

(d) *Paperwork Reduction Act.* The information collection requirement contained in § 7.6 of these regulations has been approved by the Office of Management and Budget under 44

U.S.C. 3501 *et seq.* and assigned clearance number 1024-0037. The purpose of the information collection is to meet statutory and administrative requirements in the public interest. The information will be used to assist Federal land managers in determining that applicants for permits are qualified, that the work proposed would further archaeological knowledge, that archaeological resources and associated records and data will be properly preserved, and that the permitted activity would not conflict with the management of the public lands involved. Response to the information requirement is necessary in order for an applicant to obtain a benefit.

§ 7.7 Notification to Indian tribes of possible harm to, or destruction of, sites on public lands having religious or cultural importance.

(a) If the issuance of a permit under this part may result in harm to, or destruction of, any Indian tribal religious or cultural site on public lands, as determined by the Federal land manager, at least 30 days before issuing such a permit the Federal land manager shall notify any Indian tribe which may consider the site as having religious or cultural importance. Such notice shall not be deemed a disclosure to the public for purposes of section 9 of the Act.

(1) Notice by the Federal land manager to any Indian tribe shall be sent to the chief executive officer or other designated official of the tribe. Indian tribes are encouraged to designate a tribal official to be the focal point for any notification and discussion between the tribe and the Federal land manager.

(2) The Federal land manager may provide notice to any other Native American group that is known by the Federal land manager to consider sites potentially affected as being of religious or cultural importance.

(3) Upon request during the 30-day period, the Federal land manager may meet with official representatives of any Indian tribe or group to discuss their interests, including ways to avoid or mitigate potential harm or destruction such as excluding sites from the permit area. Any mitigation measures which are adopted shall be incorporated into the terms and conditions of the permit under § 7.9.

(4) When the Federal land manager detemines that a permit applied for under this part must be issued immediately because of an imminent threat of loss or destruction of an archaeological resource, the Federal land manager shall so notify the appropriate tribe.

(b)(1) In order to identify sites of religious or cultural importance, the Federal land manager shall seek to identify all Indian tribes having aboriginal or historic ties to the lands under the Federal land manager's jurisdiction and seek to determine, from the chief executive officer or other designated official of any such tribe, the location and nature of specific sites of religious or cultural importance so that such information may be on file for land management purposes. Information on sites eligible for or included in the National Register of Historic Places may be withheld from public disclosure pursuant to section 304 of the Act of October 15, 1966, as amended (16 U.S.C. 470w-3).

(2) If the Federal land manager becomes aware of a Native American group that is not an Indian tribe as defined in this part but has aboriginal or historic ties to public lands under the Federal land manager's jurisdiction, the Federal land manager may seek to communicate with official representatives of that group to obtain information on sites they may consider to be of religious or cultural importance.

(3) The Federal land manager may enter into agreement with any Indian tribe or other Native American group for determining locations for which such tribe or group wishes to receive notice under this section.

§ 7.8 Issuance of permits.

(a) The Federal land manager may issue a permit, for a specified period of time appropriate to the work to be conducted, upon determining that:

(1) The applicant is appropriately qualified, as evidenced by training, education, and/or experience, and possesses demonstrable competence in archaeological theory and methods, and

in collecting, handling, analyzing, evaluating, and reporting archaeological data, relative to the type and scope of the work proposed, and also meets the following minimum qualifications:

(i) A graduate degree in anthropology or archaeology, or equivalent training and experience;

(ii) The demonstrated ability to plan, equip, staff, organize, and supervise activity of the type and scope proposed;

(iii) The demonstrated ability to carry research to completion, as evidenced by timely completion of theses, research reports, or similar documents;

(iv) Completion of at least 16 months of professional experience and/or specialized training in archaeological field, laboratory, or library research, administration, or management, including at least 4 months experience and/or specialized training in the kind of activity the individual proposes to conduct under authority of a permit; and

(v) Applicants proposing to engage in historical archaeology should have had at least one year of experience in research concerning archaeological resources of the historic period. Applicants proposing to engage in prehistoric archaeology should have had at least one year of experience in research concerning archaeological resources of the prehistoric period.

(2) The proposed work is to be undertaken for the purpose of furthering archaeological knowledge in the public interest, which may include but need not be limited to, scientific or scholarly research, and preservation of archaeological data;

(3) The proposed work, including time, scope, location, and purpose, is not inconsistent with any management plan or established policy, objectives, or requirements applicable to the management of the public lands concerned;

(4) Where the proposed work consists of archaeological survey and/or data recovery undertaken in accordance with other approved uses of the public lands or Indian lands, and the proposed work has been agreed to in writing by the Federal land manager pursuant to section 106 of the National Historic Preservation Act (16 U.S.C. 470f), paragraphs (a)(2) and (a)(3) shall be deemed satisfied by the prior approval.

(5) Written consent has been obtained, for work proposed on Indian lands, from the Indian landowner and the Indian tribe having jurisdiction over such lands;

(6) Evidence is submitted to the Federal land manager that any university, museum, or other scientific or educational institution proposed in the application as the repository possesses adequate curatorial capability for safeguarding and preserving the archaeological resources and all associated records; and

(7) The applicant has certified that, not later than 90 days after the date the final report is submitted to the Federal land manager, the following will be delivered to the appropriate official of the approved university, museum, or other scientific or educational institution, which shall be named in the permit:

(i) All artifacts, samples, collections, and copies of records, data, photographs, and other documents resulting from work conducted under the requested permit where the permit is for the excavation and/or removal of archaeological resources from public lands.

(ii) All artifacts, samples and collections resulting from work under the requested permit for which the custody or disposition is not undertaken by the Indian owners, and copies of records, data, photographs, and other documents resulting from work conducted under the requested permit, where the permit is for the excavation and/or removal of archaeological resources from Indian lands.

(b) When the area of the proposed work would cross jurisdictional boundaries, so that permit applications must be submitted to more than one Federal land manager, the Federal land managers shall coordinate the review and evaluation of applications and the issuance of permits.

[49 FR 1027, Jan. 6, 1984, as amended at 49 FR 5923, Feb. 16, 1984]

§ 7.9 Terms and conditions of permits.

(a) In all permits issued, the Federal land manager shall specify:

(1) The nature and extent of work allowed and required under the permit, including the time, duration, scope, location, and purpose of the work;

(2) The name of the individual(s) responsible for conducting the work and, if different, the name of the individual(s) responsible for carrying out the terms and conditions of the permit;

(3) The name of any university, museum, or other scientific or educational insitutions in which any collected materials and data shall be deposited; and

(4) Reporting requirements.

(b) The Federal land manager may specify such terms and conditions as deemed necessary, consistent with this part, to protect public safety and other values and/or resources, to secure work areas, to safeguard other legitimate land uses, and to limit activities incidental to work authorized under a permit.

(c) The Federal land manager shall include in permits issued for archaeological work on Indian lands such terms and conditions as may be requested by the Indian landowner and the Indian tribe having jurisdiction over the lands, and for archaeological work on public lands shall include such terms and conditions as may have been developed pursuant to § 7.7.

(d) Initiation of work or other activities under the authority of a permit signifies the permittee's acceptance of the terms and conditions of the permit.

(e) The permittee shall not be released from requirements of a permit until all outstanding obligations have been satisfied, whether or not the term of the permit has expired.

(f) The permittee may request that the Federal land manager extend or modify a permit.

(g) The permittee's performance under any permit issued for a period greater than 1 year shall be subject to review by the Federal land manager, at least annually.

§ 7.10 Suspension and revocation of permits.

(a) *Suspension or revocation for cause.* (1) The Federal land manager may suspend a permit issued pursuant to this part upon determining that the permittee has failed to meet any of the terms and conditions of the permit or has violated any prohibition of the Act or § 7.4. The Federal land manager shall provide written notice to the permittee of the suspension, the cause thereof, and the requirements which must be met before the suspension will be removed.

(2) The Federal land manager may revoke a permit upon assessment of a civil penalty under §7.15 upon the permittee's conviction under section 6 of the Act, or upon determining that the permittee has failed after notice under this section to correct the situation which led to suspension of the permit.

(b) *Suspension or revocation for management purposes.* The Federal land manager may suspend or revoke a permit, without liability to the United States, its agents, or employees, when continuation of work under the permit would be in conflict with management requirements not in effect when the permit was issued. The Federal land manager shall provide written notice to the permittee stating the nature of and basis for the suspension or revocation.

[49 FR 1027, Jan. 6, 1984; 49 FR 5923, Feb. 16, 1984]

§ 7.11 Appeals relating to permits.

Any affected person may appeal permit issuance, denial of permit issuance, suspension, revocation, and terms and conditions of a permit through existing administrative appeal procedures, or through procedures which may be established by the Federal land manager pursuant to section 10(b) of the Act and this part.

§ 7.12 Relationship to section 106 of the National Historic Preservation Act.

Issuance of a permit in accordance with the Act and this part does not constitute an undertaking requiring compliance with section 106 of the Act of October 15, 1966 (16 U.S.C. 470f). However, the mere issuance of such a

permit does not excuse the Federal land manager from compliance with section 106 where otherwise required.

§ 7.13 Custody of archaeological resources.

(a) Archaeological resources excavated or removed from the public lands remain the property of the United States.

(b) Archaeological resources excavated or removed from Indian lands remain the property of the Indian or Indian tribe having rights of ownership over such resources.

(c) The Secretary of the Interior may promulgate regulations providing for the exchange of archaeological resources among suitable universities, museums, or other scientific or educational institutions, for the ultimate disposition of archaeological resources, and for standards by which archaeological resources shall be preserved and maintained, when such resources have been excavated or removed from public lands and Indian lands.

(d) In the absence of regulations referenced in paragraph (c) of this section, the Federal land manager may provide for the exchange of archaeological resources among suitable universities, museums, or other scientific or educational institutions, when such resources have been excavated or removed from public lands under the authority of a permit issued by the Federal land manager.

§ 7.14 Determination of archaeological or commercial value and cost of restoration and repair.

(a) *Archaeological value.* For purposes of this part, the archaeological value of any archaeological resource involved in a violation of the prohibitions in § 7.4 of this part or conditions of a permit issued pursuant to this part shall be the value of the information associated with the archaeological resource. This value shall be appraised in terms of the costs of the retrieval of the scientific information which would have been obtainable prior to the violation. These costs may include, but need not be limited to, the cost of preparing a research design, conducting field work, carrying out laboratory analysis, and preparing reports as would be necessary to realize the information potential.

(b) *Commercial value.* For purposes of this part, the commercial value of any archaeological resource involved in a violation of the prohibitions in § 7.4 of this part or conditions of a permit issued pursuant to this part shall be its fair market value. Where the violation has resulted in damage to the archaeological resource, the fair market value should be determined using the condition of the archaeological resource prior to the violation, to the extent that its prior condition can be ascertained.

(c) *Cost of restoration and repair.* For purposes of this part, the cost of restoration and repair of archaeological resources damaged as a result of a violation of prohibitions or conditions pursuant to this part, shall be the sum of the costs already incurred for emergency restoration or repair work, plus those costs projected to be necessary to complete restoration and repair, which may include, but need not be limited to, the costs of the following:

(1) Reconstruction of the archaeological resource;

(2) Stabilization of the archaeological resource;

(3) Ground contour reconstruction and surface stabilization;

(4) Research necessary to carry out reconstruction or stabilization;

(5) Physical barriers or other protective devices, necessitated by the disturbance of the archaeological resource, to protect it from further disturbance;

(6) Examination and analysis of the archaeological resource including recording remaining archaeological information, where necessitated by disturbance, in order to salvage remaining values which cannot be otherwise conserved;

(7) Reinterment of human remains in accordance with religious custom and State, local, or tribal law, where appropriate, as determined by the Federal land manager.

(8) Preparation of reports relating to any of the above activities.

§ 7.15 Assessment of civil penalties.

(a) The Federal land manager may assess a civil penalty against any person who has violated any prohibition contained in § 7.4 or who has violated any term or condition included in a permit issued in accordance with the Act and this part.

(b) *Notice of violation.* The Federal land manager shall serve a notice of violation upon any person believed to be subject to a civil penalty, either in person or by registered or certified mail (return receipt requested). The Federal land manager shall include in the notice:

(1) A concise statement of the facts believed to show a violation;

(2) A specific reference to the provision(s) of this part or to a permit issued pursuant to this part allegedly violated;

(3) The amount of penalty proposed to be assessed, including any initial proposal to mitigate or remit where appropriate, or a statement that notice of a proposed penalty amount will be served after the damages associated with the alleged violation have been ascertained;

(4) Notification of the right to file a petition for relief pursuant to paragraph (d) of this section, or to await the Federal land manager's notice of assessment, and to request a hearing in accordance with paragraph (g) of this section. The notice shall also inform the person of the right to seek judicial review of any final administrative decision assessing a civil penalty.

(c) The person served with a notice of violation shall have 45 calendar days from the date of its service (or the date of service of a proposed penalty amount, if later) in which to respond. During this time the person may:

(1) Seek informal discussions with the Federal land manager;

(2) File a petition for relief in accordance with paragraph (d) of this section;

(3) Take no action and await the Federal land manager's notice of assessment;

(4) Accept in writing or by payment the proposed penalty, or any mitigation or remission offered in the notice. Acceptance of the proposed penalty or mitigation or remission shall be deemed a waiver of the notice of assessment and of the right to request a hearing under paragraph (g) of this section.

(d) *Petition for relief.* The person served with a notice of violation may request that no penalty be assessed or that the amount be reduced, by filing a petition for relief with the Federal land manager within 45 calendar days of the date of service of the notice of violation (or of a proposed penalty amount, if later). The petition shall be in writing and signed by the person served with the notice of violation. If the person is a corporation, the petition must be signed by an officer authorized to sign such documents. The petition shall set forth in full the legal or factual basis for the requested relief.

(e) *Assessment of penalty.* (1) The Federal land manager shall assess a civil penalty upon expiration of the period for filing a petition for relief, upon completion of review of any petition filed, or upon completion of informal discussions, whichever is later.

(2) The Federal land manager shall take into consideration all available information, including information provided pursuant to paragraphs (c) and (d) of this section or furnished upon further request by the Federal land manager.

(3) If the facts warrant a conclusion that no violation has occurred, the Federal land manager shall so notify the person served with a notice of violation, and no penalty shall be assessed.

(4) Where the facts warrant a conclusion that a violation has occurred, the Federal land manager shall determine a penalty amount in accordance with § 7.16.

(f) *Notice of assessment.* The Federal land manager shall notify the person served with a notice of violation of the penalty amount assessed by serving a written notice of assessment, either in person or by registered or certified mail (return receipt requested). The Federal land manager shall include in the notice of assessment:

(1) The facts and conclusions from which it was determined that a violation did occur;

(2) The basis in § 7.16 for determining the penalty amount assessed and/or any offer to mitigate or remit the penalty; and

(3) Notification of the right to request a hearing, including the procedures to be followed, and to seek judicial review of any final administrative decision assessing a civil penalty.

(g) *Hearings.* (1) Except where the right to request a hearing is deemed to have been waived as provided in paragraph (c)(4) of this section, the person served with a notice of assessment may file a written request for a hearing with the adjudicatory body specified in the notice. The person shall enclose with the request for hearing a copy of the notice of assessment, and shall deliver the request as specified in the notice of assessment, personally or by registered or certified mail (return receipt requested).

(2) Failure to deliver a written request for a hearing within 45 days of the date of service of the notice of assessment shall be deemed a waiver of the right to a hearing.

(3) Any hearing conducted pursuant to this section shall be held in accordance with 5 U.S.C. 554. In any such hearing, the amount of civil penalty assessed shall be determined in accordance with this part, and shall not be limited by the amount assessed by the Federal land manager under paragraph (f) of this section or any offer of mitigation or remission made by the Federal land manager.

(h) *Final administrative decision.* (1) Where the person served with a notice of violation has accepted the penalty pursuant to paragraph (c)(4) of this section, the notice of violation shall constitute the final administrative decision;

(2) Where the person served with a notice of assessment has not filed a timely request for a hearing pursuant to paragraph (g)(1) of this section, the notice of assessment shall constitute the final administrative decision;

(3) Where the person served with a notice of assessment has filed a timely request for a hearing pursuant to paragraph (g)(1) of this section, the decision resulting from the hearing or any applicable administrative appeal therefrom shall constitute the final administrative decision.

(i) *Payment of penalty.* (1) The person assessed a civil penalty shall have 45 calendar days from the date of issuance of the final administrative decision in which to make full payment of the penalty assessed, unless a timely request for appeal has been filed with a United States District Court as provided in section 7(b)(1) of the Act.

(2) Upon failure to pay the penalty, the Federal land manager may request the Attorney General to institute a civil action to collect the penalty in a United States District Court for any district in which the person assessed a civil penalty is found, resides, or transacts business. Where the Federal land manager is not represented by the Attorney General, a civil action may be initiated directly by the Federal land manager.

(j) *Other remedies not waived.* Assessment of a penalty under this section shall not be deemed a waiver of the right to pursue other available legal or administrative remedies.

§ 7.16 Civil penalty amounts.

(a) *Maximum amount of penalty.* (1) Where the person being assessed a civil penalty has not committed any previous violation of any prohibition in § 7.4 or of any term or condition included in a permit issued pursuant to this part, the maximum amount of the penalty shall be the full cost of restoration and repair of archaeological resources damaged plus the commercial value of archaeological resources destroyed or not recovered.

(2) Where the person being assessed a civil penalty has committed any previous violation of any prohibition in § 7.4 or of any term or condition included in a permit issued pursuant to this part, the maximum amount of the penalty shall be double the cost of restoration and repair plus double the commercial value of archaeological resources destroyed or not recovered.

(3) Violations limited to the removal of arrowheads located on the surface of the ground shall not be subject to the penalties prescribed in this section.

(b) *Determination of penalty amount, mitigation, and remission.* The Federal land manager may assess a penalty amount less than the maximum amount of penalty and may offer to mitigate or remit the penalty.

(1) Determination of the penalty amount and/or a proposal to mitigate or remit the penalty may be based upon any of the following factors:

(i) Agreement by the person being assessed a civil penalty to return to the Federal land manager archaeological resources removed from public lands or Indian lands;

(ii) Agreement by the person being assessed a civil penalty to assist the Federal land manager in activity to preserve, restore, or otherwise contribute to the protection and study of archaeological resources on public lands or Indian lands;

(iii) Agreement by the person being assessed a civil penalty to provide information which will assist in the detection, prevention, or prosecution of violations of the Act or this part;

(iv) Demonstration of hardship or inability to pay, provided that this factor shall only be considered when the person being assessed a civil penalty has not been found to have previously violated the regulations in this part;

(v) Determination that the person being assessed a civil penalty did not willfully commit the violation;

(vi) Determination that the proposed penalty would constitute excessive punishment under the circumstances;

(vii) Determination of other mitigating circumstances appropriate to consideration in reaching a fair and expeditious assessment.

(2) When the penalty is for a violation on Indian lands, the Federal land manager shall consult with and consider the interests of the Indian landowner and the Indian tribe having jurisdiction over the Indian lands prior to proposing to mitigate or remit the penalty.

(3) When the penalty is for a violation which may have had an effect on a known Indian tribal religious or cultural site on public lands, the Federal land manager should consult with and consider the interests of the affected tribe(s) prior to proposing to mitigate or remit the penalty.

§ 7.17 Other penalties and rewards.

(a) Section 6 of the Act contains criminal prohibitions and provisions for criminal penalties. Section 8(b) of the Act provides that archaeological resources, vehicles, or equipment involved in a violation may be subject to forfeiture.

(b) Section 8(a) of the Act provides for rewards to be made to persons who furnish information which leads to conviction for a criminal violation or to assessment of a civil penalty. The Federal land manager may certify to the Secretary of the Treasury that a person is eligible to receive payment. Officers and employees of Federal, State, or local government who furnish information or render service in the performance of their official duties, and persons who have provided information under 7.16(b)(1)(iii) shall not be certified eligible to receive payment of rewards.

(c) In cases involving Indian lands, all civil penalty monies and any item forfeited under the provisions of this section shall be transferred to the appropriate Indian or Indian tribe.

§ 7.18 Confidentiality of archaeological resource information.

(a) The Federal land manager shall not make available to the public, under subchapter II of chapter 5 of title 5 of the United States Code or any other provision of law, information concerning the nature and location of any archaeological resource, with the following exceptions:

(1) The Federal land manager may make information available, provided that the disclosure will further the purposes of the Act and this part, or the Act of June 27, 1960, as amended (16 U.S.C. 469-469c), without risking harm to the archaeological resource or to the site in which it is located.

(2) The Federal land manager shall make information available, when the Governor of any State has submitted to the Federal land manager a written request for information, concerning the archaeological resources within the requesting Governor's State, provided that the request includes:

(i) The specific archaeological resource or area about which information is sought;

(ii) The purpose for which the information is sought; and

(iii) The Governor's written commitment to adequately protect the confidentiality of the information.

[49 FR 1027, Jan. 6, 1984, 49 FR 5923, Feb. 16, 1984]

§ 7.19 Report.

Each Federal land manager, when requested by the Secretary of the Interior, shall submit such information as is necessary to enable the Secretary to comply with section 13 of the Act.

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